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### Migrant Workers' Access to Justice at Home: Nepal

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MIGRANT WORKERS' ACCESS TO JUSTICE SERIES

# Migrant Workers' Access to Justice at Home: **Nepal**



Sarah Paoletti | Eleanor Taylor-Nicholson | Bandita Sijapati | Bassina Farbenblum



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Centre for the Study of  
Labour and Mobility



UNSW  
AUSTRALIA

Law



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Cover photo: Om Kumar Chaudhary, aged 23, fixes a goods lift on a construction site in Kathmandu, Nepal on 16 December 2013. He moved to Kathmandu to learn construction work in preparation for a job in Qatar. He currently earns \$180 dollars a month but expects to earn more than double that amount in Qatar. Photo credit: © Narendra Shrestha/EPA.

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# Acronyms and Terminology

Abbreviation or Acronym	English Translation
BS	Bikram Sambat, the Nepali Calendar
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESLAM	Centre for the Study of Labour and Mobility
CMW	Convention on the Protection of the Rights of All Migrant Workers and their Family Members
CRC	Convention on the Rights of the Child
CTEVT	Council for Technical Education and Vocational Training
DA	District Attorney
DAO	District Administration Office
DoFE	Department of Foreign Employment
DoLEP	Department of Labor and Employment Promotion
FEPB	Foreign Employment Promotion Board
GAMCA	Gulf Cooperation Council Approved Medical Centers Association

<b>Abbreviation or Acronym</b>	<b>English Translation</b>
GCC	Gulf Cooperation Council (including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates)
GEFONT	General Federation of Nepalese Trade Unions
HTTCA	Human Trafficking and Transportation Control Act
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organization
IOM	International Organization for Migration
MoFA	Ministry of Foreign Affairs
MoLE	Ministry of Labor and Employment
MoLTM	Ministry of Labor and Transport Management
MoU	Memorandum of Understanding
MRC	Migrant Resource Center
NGO	Nongovernmental Organization
NLSS	Nepal Living Standards Survey
PAF	Poverty Alleviation Fund
PNCC	Pravasi Nepal Coordination Committee
PNSS	Pravasi Nepali Sewa Samiti
SAARC	South Asian Association for Regional Cooperation
SGA	Special Government Attorney
UAE	United Arab Emirates
VDC	Village Development Committee
WOREC	Women's Rehabilitation Center

In this report, the term “recruitment agency” has been used to describe private companies licensed to place workers in overseas positions, although it is understood that in Nepal the terms “manpower agency,” “foreign employment business,” and “foreign employment entrepreneur” are more commonly used.

Similarly, individual actors that connect migrant workers with recruitment agencies are referred to in this report as “individual agents.” Other terms commonly used in Nepal and abroad include “agent,” “sub-agent,” “broker,” “middleman” or “intermediary.”

Dates in Nepal are based on the Bikram Sambat (BS), Nepali calendar which is approximately 56 years and eight months ahead of the Gregorian calendar. The year of publication, 2014, is fiscal year 2070/71 BS. In this report, the BS year is given in the first reference to a law and then the Gregorian year is used thereafter. The BS new year starts in mid-April, so years do not align with Gregorian years. Where a BS year is referred to as a time period, both relevant Gregorian years are included—for example, data from the year 2070 BS is written as 2013/2014.



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# Executive Summary

## I. Overview

Every month, nearly 16,000 Nepalis travel to the Gulf States for temporary work, and thousands more go to other countries in the Middle East. Much attention has been directed to the exploitation of low-wage migrant workers in the Middle East, where harms are commonplace and severe, and access to justice is limited. But the story of labor migration also begins and ends at home. Migrant workers commonly encounter a range of abuses during their recruitment in Nepal which makes them more vulnerable to exploitation abroad.

Based on a two-year empirical study, this report provides the first comprehensive analysis of the Nepali mechanisms that regulate labor migration, and provide redress to migrant workers who experience harms during recruitment and throughout the migration process. The study finds that despite Nepal's efforts to protect migrant workers, it is generally failing to hold private recruitment companies and agents accountable, and the vast majority of migrant workers are unable to access justice in Nepal or abroad.

The report reveals that, with some notable exceptions, the law that governs recruitment and placement of Nepali migrant workers is relatively robust, but its implementation and enforcement are weak. The report examines in detail each of the mechanisms that Nepal has established to enable workers to access compensation and other forms of justice when their rights are violated, and makes findings on the governance, operation, and effectiveness of each mechanism. The report also provides detailed recommendations for improvement, many of which could be implemented in the short to medium term.

This report is the second in the Open Society Foundations' Migrant Workers' Access to Justice Series. The first report, *Migrant Workers' Access to Justice at Home: Indonesia*, was published in 2013.<sup>1</sup>

## II. Nepali Workers to the Middle East and the Importance of Access to Justice at Home

The past decade has seen an exponential increase in the number of Nepali migrant workers abroad and Nepal now sends the most workers abroad per capita in Asia. Labor migration is central to the economy of Nepal; remittances account for over 25 percent of Nepal's GDP,<sup>2</sup> and almost half of all households have at least one family member who is currently working or has previously worked abroad. In 2011, there were an estimated 722,000 Nepali migrant workers in the Middle East. The majority of Nepalis traveling to the Middle East for work are male, due in part to restrictions on migration of young women to the region. However, women continue to travel to the Middle East in significant numbers, primarily for domestic work, and often through irregular channels.

Nepali migrants, as with other migrant workers in the region, suffer particularly high levels of abuse and exploitation. Routine harms include contract substitution and fundamental changes in the nature or conditions of work, non-payment of wages, unsafe work conditions, inadequate rest, inhumane housing conditions, and confiscation of identity documents. In more serious cases, migrant workers suffer verbal, physical and sexual abuse. Hundreds of workers die while working abroad each year, often from work-related causes. Women are particularly vulnerable to serious abuse for reasons of gender discrimination, the isolated nature of their work in private homes, and irregular status. In some cases, abuses amount to labor trafficking, forced labor, and debt bondage. Few low-wage migrant workers can access compensation or other remedies for these violations while working in the Middle East.

Vulnerability to exploitation abroad is often heightened by routine violations committed in Nepal during the pre-departure phase by individual agents, recruitment agencies, and other private actors. These include misrepresenting the nature and terms of work available, overcharging on recruitment fees, delaying or cancelling departures, and failing to provide workers with correct pre-departure documents, including receipts and contracts of employment and recruitment. These abuses persist due to a lack of transparency, government oversight, and accountability in the private recruitment and placement of migrant workers—which also undermine workers' ability to access justice for these harms.

### III. Improving Migrant Workers' Access to Justice in Nepal

Nepal has significantly strengthened its governance of labor migration with the introduction of a new Foreign Employment Act in 2007 and Rules in 2008, and recently, the Foreign Employment Policy 2012. The act also established two mechanisms through which migrant workers can file criminal complaints against recruitment agencies and individual agents: a complaints investigation unit within the Department of Foreign Employment (DoFE), and a Foreign Employment Tribunal. These mechanisms operate alongside compensation schemes for death and permanent disability (under private insurance and the state-administered Foreign Employment Welfare Fund), the Nepali courts, support from civil society groups, and informal local justice mechanisms. Nepal's embassies also assist workers abroad.

DoFE and the tribunal have the potential to enable significant numbers of migrant workers to obtain compensation from recruitment companies and agents, but are failing to do so. Of the 54 migrant workers interviewed for this study, none had obtained full redress through these mechanisms. This is partly due to structural and operational challenges discussed in detail in the report, and partly to barriers to access common to many justice mechanisms in Nepal: centralization of institutions in Kathmandu; inadequate resourcing and training of officials; failure to accommodate the socio-economic realities of Nepali migrant workers, particularly of women, irregular migrant workers and minorities; lack of awareness and understanding of legal rights and redress processes among workers and their families; lack of documentation to support claims; threats to workers and fear of retaliation by recruitment agencies and other defendants for filing cases; and weak governance and accountability.

The Nepali government and legislature can improve governance and oversight of labor migration and migrant workers' access to justice by:

- Recognizing prospective, current and former migrant workers as rights holders, with defined enforceable rights and associated remedies (a 'rights-based approach').
- Improving oversight of the pre-departure phase of labor migration, particularly provision of appropriate contracts to workers.
- Improving monitoring, transparency and accountability in the regulation of recruitment agencies and individual agents.
- Providing stronger protections and remedies for migrant workers who suffer severe abuse, exploitation, debt bondage or trafficking.

- Ensuring enforceable rights and remedies for workers in an irregular status.
- Improving protections and rights enforceability for female migrant workers.

The Nepali government can improve the operation and effectiveness of redress mechanisms through:

- Decentralizing redress mechanisms and other essential labor migration services.
- Increasing resources, expertise, transparency, accountability, and efficiency within DoFE and the tribunal.
- Streamlining the handling of cases against individual agents to achieve more timely adjudication and payment of compensation.
- Improving inter-agency and civil society coordination and data-sharing.
- Improving embassy support for migrant worker rights enforcement in destination countries.
- Expanding access to the Foreign Employment Welfare Fund for all migrant workers, including those in an irregular status, and for harms beyond death and permanent disability.
- Improving the reach of pre-departure orientation programs and the scope of information provided to include coverage of legal rights and processes for seeking redress.

Nongovernmental actors can play a significant role in the development of programs, services, and strategies to improve migrant workers' access to justice. The donor community can also support reform and access to justice for migrant workers by funding and providing technical expertise in the development and implementation of data-collection, record keeping, case management systems, and related IT infrastructure, for example, as well as further targeted studies.

## IV. Conclusion

Nepal has taken significant steps toward improving governance of labor migration and migrant workers' access to justice, but justice still remains elusive for the vast majority of Nepali migrant workers who encounter harms pre-departure and while abroad. Concrete reforms can be made to the content, implementation, and enforcement of Nepali laws and procedures that will improve both migrant worker protection and access to

justice in the short and long term. Reform initiatives should be developed in close consultation with civil society representatives and migrant workers, and implemented with the goals of furthering transparency and accountability and ameliorating barriers to accessing justice.

Countries of origin, and the various stakeholders within them, have much to learn from each other's efforts (and failures) to address these challenges. It is hoped that this report on Nepal, as with the earlier report on Indonesia, provides an empirical basis for those discussions, as well as an evidence-based foundation for advocacy, changes to policies and procedures, and legal reform within Nepal. It should also prove useful as a manual to enable Nepali civil society to better understand, use, and test existing justice mechanisms.





# 1. Introduction

## 1.1 Overview

Millions of migrant workers provide essential services in low-wage industries throughout the world, including domestic work, care giving, construction, agriculture, fisheries, manufacturing, and the service industry.<sup>3</sup> In 2012, global remittances from migrant workers to their origin countries amounted to \$534 billion—triple the amount of global development aid.<sup>4</sup> Despite increasing recognition of the critical role low-wage migrant workers play in destination countries and the contributions they make to their countries of origin, these workers continue to routinely encounter harms throughout the migration process.

While governments have set up systems for facilitating and regulating labor migration, protection of migrant workers and regulation and oversight of private actors that send workers abroad have not kept pace with the expansion of labor migration programs. This is especially true in Nepal, where the number of Nepalis seeking and engaging in foreign employment has dramatically increased over the past two decades, making Nepal the largest sender of migrant labor per capita in Asia.

Labor migration has since come to play a defining role in the economy of Nepal and in the fabric of Nepali society. Remittances from abroad are believed to total more than 25 percent of Nepal's GDP<sup>5</sup> and, at \$5 billion in 2013, more than 50 percent of its imports.<sup>6</sup> Recent studies indicate that almost half of all households have at least one family member who is currently working or has previously worked abroad.<sup>7</sup> By some

estimates, more than a third (37 percent) of 15- to 29-year-old Nepalis and more than a quarter (28 percent) of 30- to 44-year-old Nepalis are working outside of Nepal to support their families—a striking proportion of the working age population.<sup>8</sup>

The treatment of Nepalis contracting to work, or indeed working, abroad, has become a priority concern for Nepali policymakers. In recent years, the government has taken numerous steps to strengthen the foreign employment system, including passing a new comprehensive labor migration law in 2007, adopting a foreign employment policy in 2012, signing bilateral agreements with select destination countries, and developing directives intended to protect migrant workers.

The knowledge base about the foreign employment industry in Nepal and the treatment of Nepali migrant workers has also increased through the research contributions of both national and international organizations. Few studies, however, have addressed enforcement of existing laws, and access to justice for migrant workers for the harms they encounter throughout the migration process.<sup>9</sup>

Access to justice is essential not only for the individuals involved, but also their families, their communities and society as a whole. Access to justice is essential for enforcement of the contractual, statutory, and treaty rights that migrant workers possess. It strengthens the rule of law by increasing transparency and ensuring accountability of private and government actors, often addressing systemic gaps in rights protections. It can encourage future good behavior by state and private actors, and increase individuals' faith and participation in public life and institutions. Financial redress can enable workers to escape the cycle of debt and poverty that makes them vulnerable to further exploitation and abuse. And, of course, it achieves the ultimate aim of providing justice to individuals who have been wronged.

This report seeks to fill a gap in existing literature and studies on Nepali labor migration, and indeed labor migration in general, by examining access to justice for Nepali labor migrants. It focuses specifically on redress options in Nepal or through Nepali institutions for Nepalis who have traveled to the Middle East (see below).

The study includes an examination of available remedies for rights violations that occur in Nepal and abroad, and assesses the accessibility and effectiveness of the mechanisms established to provide redress under the existing legal framework. It is the second in a series funded by the Open Society Foundations and others to comprehensively examine, for the first time, access to justice for migrant workers in the Arab region, with a focus on workers' country of origin. The first study on Indonesia was published in late 2013.<sup>10</sup> It is hoped that the detailed analysis and recommendations set forth in this report will contribute to the ongoing strengthening of the Nepali labor migration system.

## 1.2 Labor Migration from Nepal to the Middle East

This study has concentrated on migrants who travel to Middle East destinations for a number of reasons. First is the rapid growth in the Middle East as a destination of choice. Migration for work is not a recent development in Nepal; Nepali citizens have long traveled across the open border with India to work in India's cities, and many continue to do so. What is new is the dramatic increase in numbers traveling to newer markets in the Middle East (and also Malaysia) in the past two decades.<sup>11</sup>

As of 2011, over 700,000 Nepalis were recorded as working in Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates, from fewer than 10,000 in 1991, as Table 1 demonstrates.<sup>12</sup> Nepali migrants to the Middle East are predominantly men, working in manufacturing and construction, but women also migrate to the region, primarily as domestic workers.

---

**TABLE 1: Migration to the GCC Countries and Middle East<sup>13</sup>**

Census Year	Relevant Absentee Population	Destination
1991	6,345	Arab Countries
2001	110,810	GCC Countries (except Oman)
2011	721,791	Middle East Countries

*Note:* Country-wise disaggregated data for the years 1991 and 2011 are not available as of the time of writing.

*Source:* National census from relevant years.

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Second, as with migrants from all countries performing low-wage work in the Middle East, Nepali workers suffer particularly high levels of abuse and exploitation in the region. Nepali migrant workers routinely report problems including contract violations or substitution, unpaid wages, unsafe work conditions, inadequate rest, inhumane housing conditions, and confiscation of the worker's identity documents. Workers employed in domestic service may be confined to the home and subjected to physical or sexual abuse. The International Labour Organization estimated that approximately 600,000 individuals (from all countries) working in the Middle East in 2013 could be classified as victims of forced labor.<sup>14</sup> In that same year, significant media attention within Nepal and globally has focused on deaths of Nepali migrants working in Qatar,<sup>15</sup> raising important issues of workplace safety for migrant workers. Gender and irregular status compound the abuse and exploitation to which female migrant workers are subject throughout the region, as well as in transit.

Third, challenges associated with obtaining redress in the Middle East are particularly acute, and the power differentials between Nepal and the countries in the Gulf make it difficult for the government to bargain on behalf of its workers on an equal footing. The supply of migrant labor is greater than the demand, and many destination countries see little incentive to better regulate and enforce regulations protecting migrant workers, particularly those with limited social and political capital. Further, numerous legal and cultural barriers prevent migrant workers from using the justice system of destination states. These include the simple fact that in many Gulf countries a worker is considered “illegal” and liable to detention once he or she has left the employer—thus leaving the worker with few enforceable protections under the domestic legal regime.

Understanding actions that Nepal can take to protect its workers and provide redress is, therefore, particularly important.

### 1.3 Origin Countries and Access to Justice for Migrant Workers

Origin countries are often overlooked in public discussions on protecting migrant rights, with greater media and public interest on the treatment of migrant workers in the destination country. The studies that do examine countries of origin tend to focus exclusively on the intersection between labor migration and development, and not on prevention and mitigation of harms, or migrant workers’ access to justice when harms are perpetrated against them.

Nevertheless, as noted above, the role of origin countries such as Nepal is particularly important when a dearth of redress options exist in destination countries. This is not to diminish the need for action in key destination states, but rather point out the many possible and important steps that origin countries can take to both reduce vulnerability to harm and provide access to justice when harms occur.

The conditions that give rise to exploitation often begin at home.<sup>16</sup> This study confirms findings from other research that workers in Nepal who intend on migrating are commonly subjected to numerous harms prior to departure. Fraud, misinformation about the nature and terms of work, overcharging or theft of recruitment fees, delays in departure or failure to depart altogether all make migrant workers more vulnerable to abuse abroad and less able to change their situations. Combined with exorbitant interest rates on many loans taken out by migrant workers, these circumstances create the conditions for debt bondage and labor trafficking to occur.

Conversely, increased information and education pre-departure, and more efficient and effective checks on migrant worker documents, are just two examples of steps

origin countries can take to significantly decrease vulnerability. Access to affordable and efficient redress mechanisms to hold private actors accountable can strengthen the labor migration system overall.

There are also ethical reasons for countries of origin to play a greater role in migrant worker protection. Countries of origin and the private actors, operating within them profit significantly from workers' remittances, recruitment, and insurance costs. Arguably origin country governments have corresponding obligations to protect and promote the rights of their nationals engaged in foreign labor migration, to ensure that labor migration is effectively regulated, and to ensure that workers can access justice when their rights are violated, by Nepali actors or actors abroad.

## 1.4 Objectives and Structure of this Study

Given the above, strengthening the redress mechanisms for migrant workers in countries of origin should be a priority of individual governments and international organizations. Yet, little is known about the mechanisms that exist already in many origin countries, including Nepal, the gaps in existing frameworks, and the challenges or barriers to their implementation.

Accordingly, as with the earlier Indonesia case study, this study has as its objectives to:

- Map the legal framework and mechanisms established in specific countries of origin to provide redress to migrant workers who have suffered a harm or loss;
- Assess the effectiveness of each mechanism, and the extent to which migrant workers are or are not accessing remedies or other forms of justice;
- Identify cross-cutting obstacles to accessing justice in particular countries; and
- Make recommendations for improving access to justice for migrant workers.

This study of access to justice in Nepal is divided into four parts. The first part, Chapters 1–3, lays the framework for the report including both the theoretical foundations and research methods. Part 2, comprising Chapters 4–7, provides an overview of the migrant labor system including the principal actors, procedures and laws, as well as the common harms experienced by migrant workers. Part 3, Chapters 8–9, is the core of the report describing and assessing the pathways used by migrant workers to access justice, as well as the cross-cutting obstacles that deny access to justice. Finally, Part 4 summarizes the findings of the report and sets out detailed policy and implementation recommendations for improving access to justice for Nepali migrant workers.



## 2. Theoretical Framework

### 2.1 A Rights-Based Approach

This report takes a human rights-based approach to its assessment of access to justice for migrant workers. In doing so, it recognizes migrant workers as rights-holders and examines Nepal's laws and mechanisms in terms of their effectiveness for holding duty-bearers accountable and promoting and protecting the rights of migrant workers. This includes workers' access to remedies when their rights are violated. In understanding the standards that should be applied to international migration and access to remedies, it draws on the human rights norms set out in international law, as described below.

#### **International Human Rights Instruments and Labor Migration**

As the international community has grown increasingly aware of the special vulnerabilities of migrant workers, it has both developed new instruments for protecting and promoting migrant worker rights,<sup>17</sup> and emphasized that existing instruments also apply to migrant workers. For example, in 1990 states adopted the United Nations (UN) Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW),<sup>18</sup> which in turn builds on the rights contained in existing UN and International Labour Organization (ILO) treaties. It “reaffirm[s] and establish[es]” the basic human rights norms that it considers necessary for migrant workers to have free and equal enjoyment of rights and dignity throughout all stages of labor migration.<sup>19</sup>



The mechanisms charged with overseeing UN human rights treaties have also elaborated on and given guidance regarding how specific treaty provisions apply to migrant workers. For example, the UN Committee overseeing the Convention on the Elimination of All Forms of Discrimination Against Women (the CEDAW Committee) has addressed the human rights concerns of women migrants through General Recommendation 26 on Women Migrant Workers. This recommendation recognizes both that women experience human rights violations during all stages of migration and that CEDAW can address some of those violations. The UN Human Rights Committee and the ILO have also addressed obligations of origin countries under the core human rights and labor rights conventions to protect migrants from illegal practices of discrimination, forced labor, exploitation, and abuse.

Regional organizations have created their own normative frameworks relevant to migrant workers. For example, in 2002 the South Asian Association for Regional Cooperation (SAARC) adopted and signed the SAARC Convention on Preventing and Combating Trafficking in Women and Children,<sup>20</sup> and created a regional taskforce to monitor and assess the convention's implementation. The Dhaka Declaration of Colombo Process Member Countries was drafted in 2011 within the Colombo Process, a regional ministerial consultation process on labor migration for countries of origins in Asia.<sup>21</sup> It includes recommendations to promote the rights, welfare, and dignity of migrant workers.

## **Obligations of Origin Countries Regarding Access to Justice and Related Rights**

A number of international conventions (see Annex 3) impose obligations to respect, protect, and fulfill the human rights of all persons within their jurisdiction without discrimination, which includes migrant workers. Countries of origin have obligations to their citizens traveling abroad for work that include taking affirmative protective measures at the outset of the migration process. For example, countries of origin must effectively regulate the recruitment process, and ensure redress when migrant workers' rights are violated. Access to justice is not only critical to ensuring transparency and accountability within the labor migration system, but also to the ultimate fulfillment of the rights of the individual worker and her family members.

Access to justice, or access to redress, is a basic human right across all of the core international human rights treaties. It is reiterated in the CMW, which provides:

Art. 83. Each State Party to the present Convention undertakes:

- (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

- (b) To ensure that any persons seeking such a remedy shall have his or her claim reviewed and decided by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- (c) To ensure that the competent authorities shall enforce such remedies when granted.

Victims of human rights violations have a right to equal access to the courts and to an effective remedy as determined by a competent and independent tribunal for rights violations. Furthermore, those rights must be enjoyed equally among all people without discrimination.

In addition to the specific obligation to ensure access to redress, origin countries have obligations to provide information and documentation to migrant workers. As this study of Nepal reveals, lack of information and lack of documents are frequent barriers to migrant workers accessing justice and also contribute to other rights violations. The CEDAW Committee has criticized the failure to provide information on migration and other practices common in origin countries, including detention of women by recruitment agencies during training, exploitative fees, and bans or restrictions on women's out-migration, which contribute to the abuses endured by migrant women throughout the migration process.<sup>22</sup> It specifically recommends that countries of origin:

- Provide comprehensive education on the migration process, including education specific to the contents of the labor contracts, legal rights, and entitlements within the countries of work, and procedures for accessing formal and informal justice mechanisms;
- Require recruitment agencies to participate in training programs on women migrant workers' rights and recruitment agency obligations toward women migrant workers;
- Provide a list of reliable recruitment agencies, and implement accreditation programs to ensure good practices among recruitment agencies;
- Establish clear regulations and monitoring systems to protect women migrants, including to ensure that recruitment agencies protect women migrant workers' rights, as well as legal sanctions for breaches of the law by recruitment agencies;
- Safeguard the remittances of women migrant workers; and,
- Facilitate and ensure the right to return, services to women upon return, and other protections.<sup>23</sup>

While those rights are specific to female migrants, they arise out of common principles also found in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention on the Elimination of All Forms of Racial Discrimination, all ratified by Nepal, as well as provisions found in core conventions of the ILO. The ICCPR, for example, explicitly prohibits slavery, the holding of persons in servitude or forced or compulsory labor (Article 7), as well as prohibits cruel, inhuman or degrading punishment of any person (Article 6). The ICCPR also obligates all member countries to provide access to justice, namely to ensure an effective remedy when rights are violated, to ensure a determination of that remedy by a competent adjudicatory body, and to ensure the enforcement of any remedies awarded (Article 2(3)).

## 2.2 Defining and Assessing Access to Justice

“Access to justice” is a large field of inquiry, with numerous competing definitions and frameworks. The American Bar Association Rule of Law Initiative, for example, emphasizes the importance of institutions in its definition of the concept:

Access to justice means that citizens are able to use justice institutions to obtain solutions to their common justice problems. For access to justice to exist, justice institutions must function effectively to provide fair solutions to citizens’ justice problems.<sup>24</sup>

The World Bank takes a broader development-based view that recognizes social and economic injustice. It considers equality, access to decision-makers, and both formal and informal “systems” (rather than institutions) for accessing justice. It defines access to justice as:

Access by people, in particular from poor and disadvantaged groups to fair, effective and accountable mechanisms for the protection of rights, control of abuse of power and resolution of conflicts. This includes the ability of people to seek and obtain a remedy through formal and informal justice systems, and the ability to seek and exercise influence on law-making and law-implementing processes and institutions.<sup>25</sup>

This report takes an intermediate position. It reviews both formal and informal avenues for accessing justice but pays particular attention to the laws and institutions that enable and implement these pathways, as well as to their place in the overall legal and institutional frameworks governing migrant labor in Nepal. In addition, it considers perceptions regarding the implementation operation of the mechanisms or processes. Formal justice systems in this context are defined as civil and criminal justice processes

through state-based procedures and institutions. Informal justice systems are mechanisms for resolving disputes that operate outside of state institutions, but not including direct negotiation between parties.<sup>26</sup>

To assess the effectiveness of these mechanisms, the study draws on lists of indicators created by various international institutions to identify a set of core indicators.<sup>27</sup> It then assesses the legal framework and the perspectives of users of each mechanism against these indicators. These indicators include:

- 1) The clarity of the legal framework;
- 2) Citizen and institutional actors' awareness of the mechanism(s) and its procedures;
- 3) The accessibility of those mechanisms, in terms of geography, cost, language, duration, complexity, need for representation, and other potential barriers;
- 4) The fairness of procedures governing access to those mechanisms and due process; and,
- 5) The perceived justness of outcomes that the mechanism provides.

As UNDP has outlined, efforts to increase access to justice should focus on removing impediments to access, with clear identification of “claims holders” or beneficiaries, and “duty bearers,” as well as an assessment of capacity gaps. It also notes, though, that access to justice is, “much more than improving an individual’s access to courts, or guaranteeing legal representation. It must be defined in terms of ensuring that legal and judicial outcomes are just and equitable.”<sup>28</sup> As far as possible, this report also highlights the duty bearers of particular rights, the extent to which those actors are held accountable by particular mechanisms, and ultimately whether just and equitable outcomes are achieved.



## 3. Research Methods

### 3.1 Assessment Locations

The primary research for this study was carried out by the Nepal-based Centre for the Study of Labour and Mobility (CESLAM) in 2012 in three districts: Dhanusha, Kathmandu, and Tanahun. Additional interviews with key informants were conducted in December 2013 and January 2014 to take account of recent policy developments.

Kathmandu is the capital of Nepal and the center for government institutions, as well as for most private actors in the field of foreign employment. It is home to almost 10 percent of Nepal's population and sends a significant number of migrant workers abroad. It was also a convenient location for conducting interviews because many returned migrant workers stay for a period in Kathmandu if they are looking for further work or seeking to file a claim.

Dhanusha and Tanahun districts were selected because they sent the most migrant workers of all districts in their regions, the Tarai and hills regions respectively, between the Nepali years 2063 (2006/07) and 2070 (2010/11). Nepal is commonly divided into tarai or flatlands, hill and mountain regions. The Tarai is the most populous and densely populated region of Nepal.<sup>29</sup> Approximately 6 percent of labor permits were issued to workers from Dhanusha district between 2006/7 and 2010/11, although the district comprises only 3 percent of Nepal's population.<sup>30</sup> Dhanusha is also an important site because, even though it is relatively close to Kathmandu, its largely Madhesi population has been historically excluded in respect to political power, economic development, and

control of resources. As a result, central government presence is weak and the region maintains an active traditional dispute resolution mechanism.

Tanahun district is in the hills region of Nepal (between the Tarai and the Himalaya mountain range) and has a long history of migration, including migration for work as mercenaries in the Indian and British armies. Tanahun accounts for 2.6 percent of the total labor permits issued by the Department of Foreign Employment (DoFE) between 2006/7 and 2010/11, though, it constitutes only 1.2 percent of the total population.

## 3.2 Methods

This study primarily relies on qualitative data, examining and seeking to understand perceptions of, and experiences with, various justice mechanisms for migrant workers in Nepal. It explores common themes emerging from the experiences of participants and does not seek to provide comprehensive and definitive quantitative data regarding the operation of each of the mechanisms. Such quantitative data is not available and is beyond the scope of this study.

Nevertheless, a small component of quantitative research was conducted on a sample of claims filed with DoFE and the Foreign Employment Tribunal. In addition, the research team conducted extensive desk research into the relevant laws and policies affecting migrant workers, data on migrant work and migrant workers to the Gulf region, and the various justice institutions of Nepal. These sources include laws and policies, academic and other secondary literature, and media reports.

### Qualitative Methods

The research began with a one-day roundtable held in Kathmandu in April 2012 with various experts and stakeholders. The roundtable introduced the project to the participants and allowed participants to share initial perceptions of both the main pathways to justice used by migrant workers and the principal barriers that migrant workers faced when seeking redress. The results of the roundtable were used to develop detailed interview guides for key informants and migrant workers.

In the following months, the CESLAM research team visited the three locations and conducted interviews and focus groups with migrant workers, prospective migrant workers, and key informants. In total, 85 people, including 54 migrant workers and 31 key informants, were interviewed (see Table 2).

**TABLE 2: Categories of Persons Interviewed in Nepal**

Category	Number
Migrant workers	54
Civil society organization representatives	9
Government officials	12
Recruitment agency staff	5
Lawyers	4
Insurance company staff	1
<b>Total</b>	<b>85</b>

Migrant workers or prospective migrants were limited to those who had:

- Entered the migration process to travel to a Middle East country; and
- Experienced a problem either before departure, in transit or while abroad.

In the three locations, the authors conducted in-depth interviews with 31 migrant workers and held focus groups with an additional 27 (4 of whom had also been interviewed). One participant described two separate experiences of her 2 brothers, creating one additional case. In the interviews, the researchers explored the experience of migrant workers while abroad, and actions taken after return. The focus groups gave greater attention to pre-departure preparation and workers’ understanding of legal rights, including access to justice.

More than half of the migrants who were interviewed or participated in a focus group were based in Dhanusha (36), a quarter in Kathmandu (19), and 3 in Tanahun (this number includes the four participants who were repeated in both the in-depth interviews and focus groups).<sup>31</sup> All individual interviewees were male migrant workers (except for 1 female family member of 2 male migrants) as were 18 of the focus group participants. Nine female returned migrant workers took part in two focus groups in Kathmandu.

Key informants were heavily concentrated in Kathmandu, where most of the institutions and agencies associated with migrant labor, and the justice sector, are based. They included representatives of civil society organizations who work with migrants, lawyers, representatives of government institutions, and representatives of recruitment agencies.



## Quantitative Methods

The study includes an examination of a database of 214 cases registered with DoFE. In 2012, the research team was permitted by DoFE to visit its offices and choose at random 202 case files, which were then copied and the details entered into a spreadsheet. Since the case files at DoFE were not clearly filed or organized, it was not clear whether the files pertained to a particular period of time or what proportion of the total number of case files they represented. Random selection was accomplished simply by picking up files from around the room.

While not necessarily representative of the types of harms suffered by migrant workers or prospective migrant workers, the case files provide insight into the types of claims filed with DoFE, details of complainants and accused, procedures for processing claims, the outcomes of cases, and the functioning and efficacy of DoFE investigation and dispute resolution processes.

The research team was also permitted by the Foreign Employment Tribunal to select 12 cases at random, in a similar manner to selection at DoFE. These cases had already passed through DoFE investigation so the results are also included with DoFE cases (leading to a total of 214 DoFE cases). Though not necessarily representative of all cases, the 12 tribunal cases provide a snapshot of the types of cases filed and resolved at the tribunal and the types of decisions it makes.

### 3.3 Limitations

The data in this study is subject to several limitations. First and foremost, many migrant workers perceived the problems they experienced during the migration process as a matter of shame for themselves and their families, and thus many were reluctant to go into detail. This is particularly the case for women migrant workers, many of whom traveled via irregular means, and for whom labor migration itself may be stigmatized. Since the focus of the study was more on redress than on the harms experienced by migrant workers (so as not to repeat other studies, and to avoid unnecessarily re-traumatizing victims), the researchers did not press questions related to harms. It is therefore likely that migrant workers did not share all of the harms they had experienced. Very few, for example, mentioned serious abuses involving violence or extreme labor exploitation commonly identified in the media and human rights reports.

Second, the field research was conducted primarily in Nepali and in some cases in Maithili, and then translated into English for other members of the research team to review. Similarly, English translations of the laws made available at the Nepal law commission's website ([lawcommission.gov.np](http://lawcommission.gov.np)) were used. While all efforts were made

to ensure that translations were accurate and complete,<sup>32</sup> it is possible that the nuance and detail of some accounts were lost.

Third, factors such as geographical barriers, discrimination based on caste, ethnicity, region and religion, and other social and economic considerations continue to prevent victims from accessing the justice system.<sup>33</sup> The research sites for this study were selected in order to reach a cross-section of the population across these factors, however it did not analyze the differential impacts of these factors on access to justice. This warrants examination in future studies.



## 4. Who Are Nepali Migrant Workers to the Middle East?<sup>34</sup>

### **Eligibility to Be a Migrant Worker**

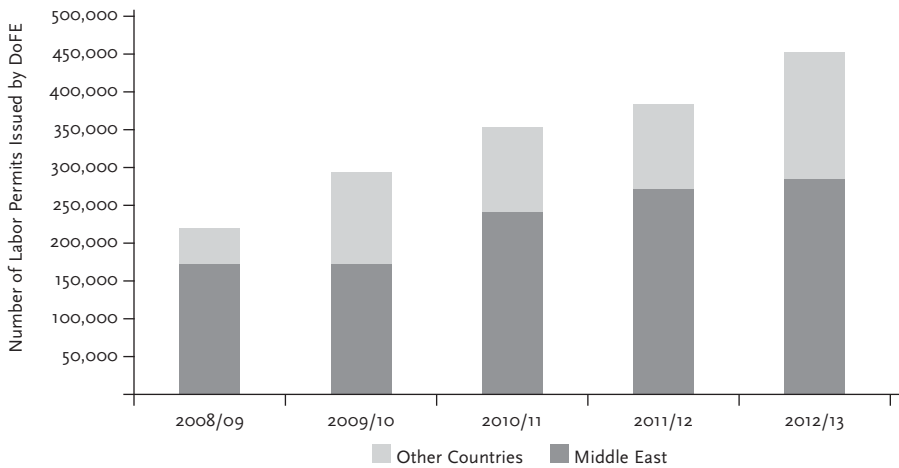
According to the Foreign Employment Act 2007:

- Only nationals of Nepal can be registered as “Foreign Workers” (Section 2).
- Migrant workers must be aged 18 or older. It is an offense for a recruitment agency or the government to send a minor abroad for foreign employment (Section 7).
- Discrimination on the basis of gender is prohibited when sending workers abroad unless an employer requests workers of a particular gender (Section 8). Nevertheless, women below the age of 30 are currently prohibited from traveling to the Gulf to work as domestic workers, pursuant to a decision of the Minister of Labor.<sup>35</sup>
- The Government of Nepal may make “special facility” for minority and disadvantaged groups who “go for foreign employment.” These groups include women, Dalits, indigenous groups, “oppressed” persons, victims of natural disasters, and those living in remote areas (Section 9(1)). Any institution must “provide reservation” to these groups in the numbers prescribed by the government (Section 9(2)).

# 4.1 Demographics of Nepali Labor Migrants to the Middle East

According to the National Population and Housing Census 2011, the absentee population of Nepal is 1,921,494, approximately 7.3 percent of the total population.<sup>36</sup> Of those, 721,791—37.6 percent of the total absentee population—were in the Middle East.<sup>37</sup> In fiscal year 2012/13, DoFE issued 453,543 labor permits to work abroad (excluding India) (see Figure 1), out of which about 63 percent were issued for employment in the Gulf States, particularly Qatar, Saudi Arabia, and the United Arab Emirates.<sup>38</sup> The remaining permits were issued for employment in Malaysia, South Korea, and other countries. These official figures do not include the unknown number of individuals who migrate for work outside of the official government process (see Irregular Migration below).

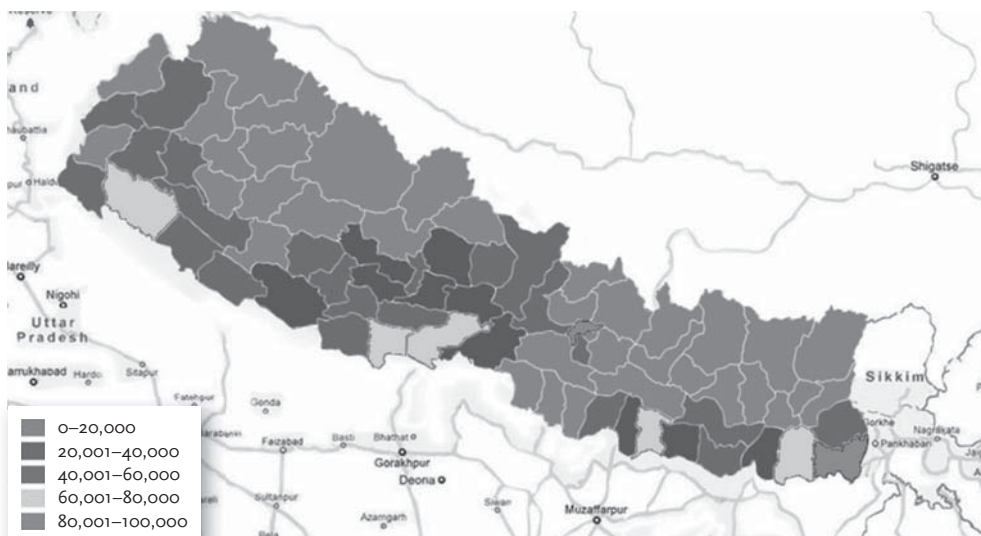
**FIGURE 1: Labor Permits Issued in Nepal 2008/09–2012/13**



Source: Department of Foreign Employment

Based on the 2011 census, the seven districts of Nepal with the highest number of absentees are, in descending order: Kathmandu, Jhapa, Morang, Nawalparasi, Rupandehi, Kailali and Dhanusa (see Figure 2: Numbers of Persons Absent per District in 2011).<sup>39</sup> Most (six of the seven) districts are located in Tarai. In the aggregate, however, the Tarai and Hill regions contribute equally to the total number of labor migrants (about 1.4 million each).<sup>40</sup>

**FIGURE 2: Numbers of Persons Absent per District in 2011**



Source: Census 2011 and CESLAM Website ([www.ceslam.org](http://www.ceslam.org))

Nepali men are much more likely to travel to a Middle Eastern country than women. The national census of 2011 found that 5.2 percent of Nepali men were working in a Middle Eastern country compared to only 0.3 percent of women.<sup>41</sup> Another study in 2011 found that migrant workers to the Gulf were primarily from rural areas, and came from traditionally excluded populations, including the Tarai Dalits (formerly, considered “untouchables”), the Janajatis (indigenous peoples) from the Hill and Tarai regions, or from Muslim and other minority communities.<sup>42</sup>

Nepali labor migrants to the Gulf are not the poorest of the poor; many come from the middle class. Migrants to the Gulf are more likely to come from the Eastern and Central regions of Nepal, which have the lowest levels of poverty among the various regions in the country.<sup>43</sup> Migrants from the mid-western and the far-western regions, much poorer parts of the country, have overwhelmingly preferred India.<sup>44</sup>

The World Bank has also found that the second and third richest wealth quintiles had the highest proportion of households with a family member working in the Gulf (22.1 percent and 17.2 percent, respectively).<sup>45</sup> Similarly, Nepalis who travel to the Gulf region are more literate than the population as a whole, with the largest proportion having at least a secondary education.<sup>46</sup> Individuals with minimal education have a higher probability of going to India, whereas those with bachelor’s degrees or higher tend to migrate to developed countries.<sup>47</sup>

Not all labor migrants to the Gulf are comparatively wealthy and well-educated. Between 5 and 10 percent of households in the poorest two income and wealth groups also send family members to work in Gulf countries.<sup>48</sup> Those with lower education and income levels are more likely to work in low-wage and poorly protected industries, such as manufacturing, construction or domestic work, rather than the service and hospitality sectors.<sup>49</sup> Notably, most of the male migrant workers interviewed for this study had worked in the construction sector and all of the female migrant workers had been domestic workers.

## 4.2 Female Migrant Workers

As noted above, far fewer Nepali women travel to work abroad than men, including to the Gulf. Among registered workers, DoFE issued just 27,713 labor permits to female migrants (6.1 percent of all permits) compared to 425,830 permits to male migrants, during 2012/13.<sup>50</sup> These registered migrants came primarily from the eastern Tarai region of Nepal, namely Jhapa district, followed by Sindhupalchowk and Morang.<sup>51</sup>

Given that many women travel irregularly (see below), the actual number of female migrant workers is likely much higher. Nevertheless, census data that tracks “absentees” still point to comparatively few women migrating.<sup>52</sup> In 2011, 721,791 Nepalis were reported by their families as absent from Nepal and working in the Middle East, out of which 673,104 were males and only 48,656 (6.7 percent) were females.<sup>53</sup>

India remains the top destination for women, with Kuwait and the UAE in second and third places respectively.<sup>54</sup> However, proportionally, women constitute about 94 percent of the Nepali labor force working in Lebanon.<sup>55</sup> Women in countries other than India are believed to work in hotels, catering, domestic work and care giving (19 percent), followed by manufacturing (13 percent) and health and medical services (12 percent).<sup>56</sup>

Other studies have suggested a number of reasons for the disparity between women and men’s labor migration from Nepal.<sup>57</sup> The first is historical, namely that men have traditionally migrated for work, for example to British India or into the British armed services, at far greater rates than women. This began to change in the 1990s due to democratic changes and a more positive perception of international migration as a route to economic development. However, women have significantly fewer resources than men (it is estimated that women own land in only 9 percent of Nepali households, and only 11 percent of those own both land and house)<sup>58</sup> and so have less means to pay, or obtain a loan to pay, to migrate. Further, women have significantly lower literacy rates and education levels than men in Nepal and, therefore, far fewer have access to

skilled or semi-skilled professions.<sup>59</sup> Overseas migration of Nepali women also remains stigmatized due to clearly defined gender roles and patriarchal perceptions that only men should be breadwinners for their families.<sup>60</sup>

Intensifying these historical and social barriers, legal and policy restrictions on women's migration have contributed to the relatively small number of women migrating for work, by disincentivizing movement and by excluding women from accessing regular migration channels. Until 1998, for example, women were required to obtain the consent of their guardian (whether parent, husband or other relative) to travel abroad.<sup>61</sup> More recently, women's migration has been banned entirely, or restricted to certain women or certain destination countries.<sup>62</sup> In 1998, public protest over the alleged sexual abuse and death of a Nepali domestic worker in Kuwait resulted in a cabinet decision to ban all female migration for work to all Gulf countries as a protective measure.<sup>63</sup> This ban was partially lifted in 2003, and completely lifted in 2010. However, two years later in August 2012, the government reinstated restrictions prohibiting women under 30 years of age from working in the Gulf as domestic workers.<sup>64</sup> Other bans on foreign employment in individual countries have also been imposed, for example, in 2009 (January to May), the government banned women from travelling to Lebanon for domestic work due to the number of reported suicides of Nepali domestic workers in that country.<sup>65</sup> The Foreign Employment Act 2007 provides for prosecution of recruitment agencies that send migrant workers to countries that are not approved by the government.<sup>66</sup>

Migration restrictions have been controversial in Nepal, and while they reduce female migration, they do not prevent it.<sup>67</sup> A government spokesperson recently justified them as necessary to protect women and prevent physical, sexual, and psychological abuse of young Nepali female migrant workers in the Gulf countries.<sup>68</sup> A number of local and international organizations, however, view them as a violation of women's right to freedom of movement. They argue that the bans discriminate against women, and rather than offer protection, they in fact stigmatize women's migration and encourage irregular and risky travel via third countries.<sup>69</sup>

## 4.3 Irregular Migration

The Government of Nepal regards a "regular" worker as a person with a stamped government-approval labor sticker in his or her passport (see Section 5.2—The Migration Process).

Migrant workers who travel outside of the government-mandated system and thus do not receive a sticker are considered irregular migrant workers. Common ways of becoming irregular include: failing to obtain the required documents and permissions



before departure; not leaving through Nepal's national airport, for example, travelling overland to India and then from an Indian airport to the Middle East;<sup>70</sup> or using a non-work visa, such as a tourist visa, to go abroad and then overstaying.

UN Women estimated in 2013 that of the approximately 3.2 million Nepali workers in countries other than India, half were undocumented.<sup>71</sup> Of those, approximately 90 percent were women,<sup>72</sup> and as many as 80 percent of Nepal's total female migrant workers are in an irregular status.<sup>73</sup> Scholars have speculated that about 30–40 Nepali women travel to the Gulf region daily to work as domestic workers; and most of the approximate 20,000–25,000 working in Saudi Arabia alone are working there “illegally”.<sup>74</sup> In 2012, DoFE introduced an initiative to register irregular workers when they re-entered Nepal while on leave from their foreign employment. In the seven months from September 2012 to April 2013, 23,817 individuals, 22,044 males and 1,773 females, took advantage of this initiative and regularized their status by obtaining a labor permit from DoFE before departing once again.<sup>75</sup>

Several factors account for the prevalence of irregular labor migration from Nepal. For some workers, government requirements, as well as travel to and accommodation in Kathmandu to meet these requirements, is too expensive. Others believe they are traveling regularly, only to find out later that their agent provided them with false documents or obtained an incorrect visa. Recruitment agencies may deliberately send workers irregularly if the job or worker would be ineligible for government approval under Nepali law—for example, if the job pays below the threshold required by the Government of Nepal,<sup>76</sup> or if the individual is below the age of 18. A male returnee from Sinurjoda in Dhanusha district,<sup>77</sup> said:

I first went abroad in 2004, when I was not yet 17 years old. My family was indebted and we were struggling to pay the loan back. An agent approached us and said that he would help me go abroad. I did not even have my citizenship certificate then. The agent helped me prepare one that falsely stated that I was 18 years old. I applied for a passport based on the date of birth given in the citizenship certificate.

Migration bans and restrictions, such as those applied to female migrants discussed in the previous section, restrict the availability of regular pathways and contribute to the number of irregular migrant workers.

Workers, particularly women, are exposed to significant risks in transit, as well as, in the destination country. Their irregular status then limits their ability to seek redress once in the destination country. Two of the nine women who participated in focus groups had travelled to the Gulf via India. One travelled to India with her husband and arranged all of her documents herself. The other used the services of an agent (see Box—Kamala's Experience).

## Kamala's Experience of Traveling to Saudi Arabia via India<sup>78</sup>

A common route for irregular Nepali migrant workers is through India, where workers arrange a work permit and visa in a major Indian city such as Mumbai. Both, Nepali and Indian, agents appear to provide this service, in defiance of government restrictions. Despite the significant risks involved, many women migrant workers choose this route because it allows them to circumvent migration bans, and may cost less than migrating regularly.

Kamala, a participant in one focus group, shared her experience of traveling through India in 2008, a period during which female migration to the Gulf was prohibited. At the time, she was 22 years old, and had been a widow and mother for seven years.

*I was 22 years old when I decided to go abroad. I thought since two of my older brothers had been working in Saudi for the past 12 or 13 years, I would have someone there if I ever encountered any trouble. I told no one in my family that I was going to Saudi Arabia through India. I set off for Saudi Arabia with my agent and three other women from my village.*

*My agent had arranged my passport for me, but I did not have any contract or any other documents. I was told only verbally that I would be receiving 700 [Riyal] per month. We went to Pokhara first and then across the border to Darjeeling, in India, and then to Siliguri. We spent two days on a bus and three days on a train. At the border the agent pretended he was my brother and I was his little sister. He said that the other women were also his relatives and made one of the women claim to be my mother. In addition, women who wore traditional lungis were made to wear pants. Women, who did not even wear kurtas, were made to wear pants and all of us had a good laugh over it.*

*When we reached Mumbai, we stayed for eight days and were not allowed to go anywhere. The agent's wife was Indian and we stayed with her. We did not speak Hindi, and did not understand what was happening around us—when they spoke to us we were afraid and hid. We thought we were going to die. I was the only one who understood a little bit, but only a little.*

*I was able to call my brother, who was already in Saudi Arabia, from Mumbai. He was very angry to find out I was in India and was going to Saudi Arabia. He said, "I will send you 10,000 rupees and you should go back home at once. You don't have to go abroad." He told me that many Nepali sisters had faced*

*problems in Saudi Arabia and that he, along with his friends, had helped them by collecting money to send them back to Nepal. Even after hearing all this, I refused to change my mind. I said, "Brother, the whole world is going [to the Gulf]. If I'll die, I'll die. If I'll live, I'll live. What can I do?"*

*I worked in Saudi Arabia for two-and-a-half years, but I only received my salary for the first two months, and just 1000 Riyal, not the 1,400 Riyal promised. They gave me very little food and once I did not eat for three days, just stayed in my room. Whenever I asked for money to send to my child or my mother my employers would tell me that I would be given my pay at the end. They also held my passport, did not let me make phone calls, and I was not allowed to go anywhere. It was like living inside a prison. My brothers would call and my employer would either not pick up the phone or tell them that I was busy and could not talk to them.*

*My agent called once and asked me to send him money I owed him after I received my salary. I told him I was not even getting enough food, let alone being paid, and that I would put him in jail when I returned. He did not call me again. Eventually I was able to call my brothers in secret and they arranged for me to return home and paid for my ticket themselves. I never received my wages. When I came back, I heard the agent had moved to India with his wife, so I could not do anything.*

Another factor that contributes to the prevalence of irregular migration is the *kafala*—or sponsorship—system that operates in countries in the Gulf. The *kafala* system links an individual's immigration status directly to a sponsoring employment agency or employer, such that if a migrant worker loses her employment—either because she flees the employer or because the employer terminates the contract, closes down or for some other reason—she will instantly become irregular in the destination country.<sup>79</sup> Migrants can also become irregular if they overstay the period of their approved employment and their visa and labor permit expire.

Migrants who fall into an irregular status often face considerable exploitation and risk arrest and deportation. Nonetheless, despite their irregular status workers usually retain the right to seek redress in the destination country for claims arising from their employment. They may be required to stay at the embassy or in an immigration detention center while pursuing redress, a significant deterrent for many workers. Migrant workers who fall into irregular status abroad are also entitled to seek redress upon return to Nepal so long as they are able to provide documents such as their contract and visa as evidence to support a claim. This evidentiary requirement poses significant

practical challenges for many workers who fall into irregular status because employers confiscate personal documents and workers who leave their employers in distress or due to a dispute find it hard to recover their papers. It is also a significant obstacle for workers who do not travel abroad through regular channels and do not have the required contracts or receipts for payment of fees.



## 5. Migration Actors and the Migration Process in Nepal

### 5.1 Key Actors in Nepal's Foreign Employment Sector

Foreign employment from Nepal is managed by a combination of public and private sector actors within Nepal as well as abroad. Public institutions create and oversee the regulatory and administrative frameworks, while private businesses and individuals are primarily responsible for implementation. Unlike some other countries, Nepal's government does not place migrant workers directly, except to South Korea. It also does not directly impart training or orientation to migrant workers, though the government designs the curriculum and licenses the orientation training centers.<sup>80</sup> This section provides a brief overview of the functions of each main actor in Nepal's foreign employment industry.

#### **Public Institutions**

The lead agency on migration for work in Nepal is the Department of Foreign Employment (DoFE), within the Ministry of Labor and Employment (MoLE) (formerly known as the Ministry of Labor and Transport Management (MoLTM), based in Kathmandu. DoFE was established by the Foreign Employment Act (FEA) of 2064 (2007) as the government agency responsible for “carrying out functions related to foreign employment” (Section 67). This includes licensing of private actors to undertake foreign employment-

related business, approving recruitment agencies' applications to recruit workers for specific job orders, and approving the departure of each prospective migrant worker. It also has an investigations office tasked with receiving complaints against recruitment agencies and agents and for registering eligible cases at the Foreign Employment Tribunal. The case-handling functions of DoFE and the tribunal are discussed in Chapter 8.

In addition to DoFE, the Foreign Employment and Promotion Board (FEPB), is charged with promoting foreign employment, and protecting the "rights and interests of workers going for foreign employment and [recruitment agencies]."<sup>81</sup> The FEPB, established under the FEA 2007, is an interagency body chaired by the Minister for Labor and Employment. The other members include representatives from related ministries, the National Planning Commission, Department of Foreign Employment, Nepal Rastra Bank (Central Bank), as well as foreign employment experts, recruitment agency associations, skill-orientation training providers, health institutes, trade unions, the Chamber of Commerce, and the Council for Technical Education and Vocational Training.<sup>82</sup>

To date, the FEPB has assisted the repatriation of stranded workers or workers who are deceased or have been injured abroad; instituted a program to compensate disabled workers or the families of deceased workers (discussed in Chapter 8); undertaken some safe migration awareness programs; and provided social security and reintegration services to migrant workers. The FEPB also suggests policy changes to reduce foreign employment related fraud. The law sets out a number of other functions and programs that come under the authority of the FEPB but most of these have not yet commenced, for example broad dissemination of pre-departure information at the village level, reducing irregularities in the foreign employment system and conducting promotional activities.<sup>83</sup>

Public institutions in charge of migrant labor are centralized national agencies based in Kathmandu. These institutions do not have local branches at either regional or district levels. Local government, including District Administration Offices and Village Development Committees, do not have any role in the regulation or management of foreign employment under the FEA 2007 or 2008 Rules.

## **Private Actors**

### **Foreign Employment Businesses (Recruitment Agencies)**

Private recruitment agencies facilitate most foreign employment from Nepal, though the use of a recruitment agency is not mandatory. For those job seekers who use a recruitment agency to find a position, the agency oversees the entire recruitment process. In return, the intending migrant worker pays a fee to the agency before departure, which is regulated by DoFE. For migrant workers to the Middle East, the maximum fee

that can be charged by a recruitment agency is NPR 70,000 (approximately US\$ 700).<sup>84</sup>

Private recruitment agencies are regulated by the FEA 2007 and 2008 Rules. The FEA requires recruitment agencies intending to carry out a “foreign employment business” to obtain a license from DoFE (Section 11). This requires submission of a business plan, evidence that the agency director has at least two years of experience in foreign employment, and payment of a NPR 3,000,000 (approximately US\$ 30,000) deposit and NPR 20,000 (approximately US\$ 200) license fee.<sup>85</sup> The 2008 Rules require the person seeking a license to demonstrate that he or she has not been punished for a criminal offense “involving moral turpitude,” and has not been the director of an agency whose license was cancelled, but do not require evidence of a clean record in recruiting for domestic or foreign employment.

As of April 2013, a total of 769 recruitment agencies were registered in Nepal.<sup>86</sup> Most were headquartered in Kathmandu, although the law permits branch offices outside the capital with prior DoFE permission.<sup>87</sup> Due to widespread breaches of the law (namely recruitment agencies opening branch offices without permission), in late 2012 the government halted approval of branches. At that time, only 47 branch offices belonging to 35 recruitment agencies had been approved and these remain the only “legal” branches today.<sup>88</sup> DoFE has the power to fine recruitment agencies that open unauthorized branch offices and close down those offices, and carries out crackdowns from time to time.<sup>89</sup>

DoFE is also responsible for monitoring recruitment agency conduct and revoking or suspending licenses. Suspension may occur following a DoFE finding that an offense has been committed under the FEA 2007 and may be for a maximum of six months (Section 61(7)). DoFE may revoke a license if it finds that the license was obtained fraudulently or the fees or deposit were not paid, or for doing “any act contrary to” the FEA 2007 (Section 13), including specific offenses discussed later in this report. The revocation of licenses must be made public (Section 78). After a license is revoked it cannot be reissued to the same operator (Section 58), and the director of a delicensed agency cannot subsequently file for a new license under a different name—but there is nothing to stop an agency representative or former director from joining another agency in a capacity other than director. The law also does not set up a timetable or procedure for conducting monitoring visits.

### **Employer Institutions**

Outside of Nepal, key private actors are placement agencies in the destination country, referred to under the FEA 2007 as “employer institutions.” The employer institutions are authorized to solicit and place migrant workers for employment, and it is the employer institution with whom the migrant worker enters into contracts. The employer institution must be “based abroad” and must be “established under the prevailing com-



panies act to carry on the foreign employment business” (Section 2). This means that the employer of a Nepali migrant worker must be overseas and be a registered company under the relevant law; individuals cannot act as employment institutions.

There is very little check or oversight of employer institutions under Nepal’s law. For example, it is possible for a Nepali embassy to send information to DoFE that it is not appropriate to send workers to a particular employer institution, and such a letter can be grounds for refusing prior approval.<sup>90</sup> However, the law does not mandate the embassy to verify the existence or reputation of the employer institution, to gather information on problematic employers, or to provide such information to DoFE.

### **Orientation Training Centers**

Privately operated training centers provide migrant workers with a government-mandated two-day pre-departure orientation program.<sup>91</sup> Orientation training centers are licensed to give this orientation by DoFE, following a licensing assessment by the FEPB.<sup>92</sup> The *Directive on the Licensing and Renewal of Institutions Providing Orientation Training*–2013 sets out the criteria for a license, including possession of a reasonably sized training space, internet access, restrooms, and other facilities.<sup>93</sup> Content of the orientation is provided by the state (see Chapter 9). The cost of a training license includes a cash deposit of NPR 100,000 (approximately US\$ 1,000), and license fee of NPR 10,000 (approximately US\$ 100) for the first year, and NPR 5,000 (approximately US\$ 50) each subsequent year the license is renewed.<sup>94</sup> As of March 2014, 101 institutes were licensed to provide the orientation training to departing migrant workers, majority of which were based in Kathmandu.

### **Individual Agents**

Private individuals, commonly called agents, also carry out many recruitment-related activities as intermediaries between recruitment agencies and potential workers (see Section 5.3—The Migration Process for Most Migrant Workers). Recruitment agencies interviewed for this report each spoke of working with between 20 and 50 individual agents at any one time who identify workers for recruitment and deliver them to the agency in Kathmandu for a commission. Individual agents are commonly linked to instances of fraud, misrepresentation, overcharging of fees, and other harms suffered by migrant workers (see Chapter 6—Harms).

Nepal has sought to regulate the use of individual agents in two ways, with limited success. First, it has introduced a licensing and registration system in FEA 2007 whereby recruitment agencies that wish to use an agent must register the agent with DoFE (Section 74(2)). An agent is only permitted to be registered with one recruitment agency at a time, and that recruitment agency is then liable for any actions by the individual agent.<sup>95</sup> The registration process is expensive, however, requiring a deposit of NPR 200,000 (approximately US\$ 2,000) for each individual agent.<sup>96</sup> Registered

agents must also be able to read and write Nepali fluently, be able to “explain foreign employment related matters to others,” and have no criminal history.<sup>97</sup>

Second, the FEA 2007 makes acting as an unregistered agent a criminal offense. Section 10 categorically prohibits such individuals from “carrying on the foreign employment business,” and the act imposes punishment on an individual who does so (Section 43). However, the act does not impose any concomitant penalty on recruitment agencies for using unregistered agents, limiting the effectiveness of this prohibition.<sup>98</sup>

Likely because of the expense of registration and the lack of consequences for using unregistered agents, as of June 2013, recruitment agencies had registered only 290 individuals with DoFE.<sup>99</sup> In March 2014, DoFE decided to halt registration because of the low numbers and reported fraud in the system—namely, instances of several recruitment agencies registering the same individual.<sup>100</sup> It plans to recommence registration when a biometric identification system has been established to prevent such fraud.<sup>101</sup> The prevalence of unregistered agents and the ability of recruitment agencies to shield themselves from liability through the use of unregistered agents remain among the greatest obstacles to creating a transparent, accountable, and protective labor migration system. For further discussion of the use of individual agents, see Section 5.3, Common Migration Practice for Most Migrant Workers.

### **Other Private Actors**

Other private businesses also operate in the foreign employment sector and interact with migrant workers before they depart. These include:

- “Health institutions,” namely companies that prepare required medical examinations and certifications of good health (required per Section 72);
- Specialized skills-training providers that provide workers with particular skills required by employers abroad (usually for more specialized trades such as carpentry, scaffolding, and plumbing) or required by the government (namely for domestic work).
- Nepali insurance companies that provide life insurance to workers for the period of their employment contract (mandatory for all migrant workers under the FEA 2007).
- Private institutions and individuals that provide financial services to migrant workers, including commercial banks, money transfer agencies, savings and credit groups, and private moneylenders. Services range from loans to transmission and investment of remittances.

Despite the central role each of these actors plays in the facilitation of labor migra-

tion, other than insurers, none are directly regulated by DoFE under the FEA 2007. The law does, however, require that some be recognized and accredited in their field. Skills training, for example, must be provided by training centers with accreditation from the Council for Technical Education and Vocational Training.<sup>102</sup>

In respect to medical examinations, four of the Gulf countries namely Bahrain, Kuwait, Oman, and Saudi Arabia accept medical reports only from centers affiliated with the GCC Approved Medical Centres Association. The recruitment agencies send workers to the association-approved office from where they are referred to one of the 12 medical centers working under it in Nepal.<sup>103</sup> The FEA 2007 further requires that, if the migrant worker is provided a false medical report and is sent back from the destination country, the medical office that prepared the report must “bear the expenses incurred in going for foreign employment and returning to Nepal” (Section 72(2)).

Insurance must be obtained from one of nine private insurance companies authorized by DoFE to provide insurance services to migrant workers.<sup>104</sup> For example, Baideshik Rojgar Jeevan Beema [Foreign Employment Life Insurance], an insurance scheme from National Life Insurance Co. Ltd., provides a minimum of NRS 500,000 in case of death of the worker, and covers a “disability risk and body transportation cost” of up to NRS 100,000. For more on insurance as a remedy to harms experienced by migrant workers see Section 8.4—Compensation in the Case of Death or Disability.

Financing of labor migration is provided to migrant workers by banks as well as by individuals. An estimated 74 percent of migrants need to take out loans to pay for recruitment fees.<sup>105</sup> Migrants who do not own sufficient collateral to obtain a bank loan resort to informal channels for money, including family, friends, neighbors, and, in many cases, moneylenders.<sup>106</sup> Informal moneylenders commonly charge exorbitantly high interest rates that place workers under significant and ever-increasing debt from the moment they pay recruitment fees in Nepal—a factor that prevents workers from leaving or seeking redress for exploitative work conditions, or from challenging pre-departure irregularities. Amnesty International, for example, found that migrants paid anywhere from 15 to 60 percent in interest to moneylenders, as compared to the official bank rates of between 8 and 14 percent.<sup>107</sup>

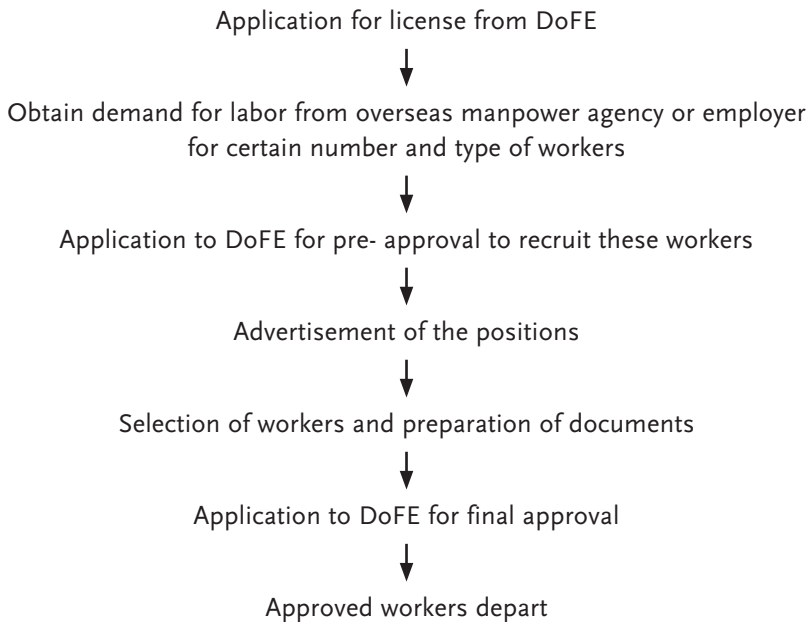
## 5.2 Migration Under the FEA 2007

Under the FEA 2007, migrant workers may travel abroad through two pathways: independently or with the assistance of a licensed foreign employment business (recruitment agency). Those traveling independently, find their own work in the destination country, for example, through a family member or friend already working there. Two

of the migrant workers interviewed for this study had found their positions in this way. Independent travelers must still obtain DoFE approval for their travel and pay the required fees such as the Migrant Welfare Fund charges to the FEPB. The following section sets out the steps for placement by a recruitment agency under the FEA 2007.

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**FIGURE 3: Procedure for Foreign Labor Recruitment by Recruitment Agency, as Set Forth Under FEA 2007**



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### **Recruitment Agency Obtains Overseas Order and DoFE Pre-Approval**

Recruitment begins with a licensed recruitment agency in Nepal obtaining an order for labor (officially referred to as a “demand letter”) from an overseas employer or manpower agency. This order requests a certain number and type of workers. The recruitment agency then applies for DoFE “prior approval” to hire workers to fill the order.

The agency must submit details of the positions, a copy of the demand letter certified by the Nepali embassy in the destination country, copies of the draft employment contract and the draft contract between the worker and the recruitment agency, a copy of the agency license, sample job advertisements, and details of the fees that the agency will be charging (Section 15(1)).<sup>108</sup> Once all of the documents are received, DoFE must make a decision within four days (Section 15(2)).

Grounds for refusing prior approval include a mismatch between the type of workers sought and the nature of the position, a position that is deemed to pose a risk to the “dignity, prestige or health” of the workers, and security reasons. A DoFE officer can also refuse the application if the documents are inconsistent or if a Nepali diplomatic representative in the destination country notifies DoFE that the country or the employer is not appropriate to receive workers (Section 15(3)).<sup>109</sup>

### **Recruitment Agency Advertises Positions and Selects Workers**

Once prior approval is received, the recruitment agency must advertise the positions in a national newspaper. The advertisements must be comprehensive, and include a description of the terms and conditions of the work, the number of positions, and the fees to be charged.<sup>110</sup> Any person interested in filling the position must make an application to the recruitment agency.<sup>111</sup> The recruitment agency must then select the applicants “on the grounds of qualification and experience.” Employers or their representatives sometimes come to Nepal to interview and select workers.<sup>112</sup> The successful applicants’ names are published in a list posted at the recruitment agency’s offices and submitted to DoFE (Section 17).

### **Pre-Departure Requirements and Final Approval**

Selected workers must complete a number of steps before departure in order to obtain a “labor permission sticker,” which indicates final approval for departure. The law does not specify who is responsible for arranging these steps, but the recruitment agency must demonstrate to DoFE that all the steps have been completed. They include:

- Obtaining a valid work visa;
- Undertaking any required skills-oriented trainings. Individual employers may require specific skills, and the government requires a 21-day skills training for women planning to work as domestic workers;
- Attending a pre-departure orientation training;
- Receiving a full medical examination and obtaining a clean bill of health;
- Purchasing life insurance;
- Payment of NPR 1,000 (around US\$ 10) into the Foreign Employment Welfare Fund;
- Signing of contracts between the recruitment agency and worker, and employer and worker;
- Paying any recruitment fees to the recruitment agency.<sup>113</sup>

The recruitment agency must present to DoFE evidence of all of the above in the form of certificates, copies of the passport, visa, contracts, and receipts for insurance and recruitment fees (Section 19(1)). If all documents are in order and consistent with the information submitted during the pre-approval process, DoFE will place the labor permission sticker in the passport of the worker (Section 19(2)).

The number of approvals has been increasing each year since 2007. During the first nine months of the fiscal year until mid-April 2013/14, DoFE issued 699,209 pre-approvals and granted 356,998 final labor permits to migrants to undertake foreign employment.<sup>114</sup> As discussed in the subsequent chapter, however, it appears that DoFE has been granting pre-approval and issuing final labor permits in cases where the contract and other requirements set forth in the act have not been met.

TABLE 3: Pre-approvals and Final Labor Permits Issued by DoFE

Approval/Year	2010/11	2011/12	2012/13	2013/14 (first nine months)
Pre-approval	369,664	481,723	702,519	699,209
Final Labor Permit	354,716	384,665	453,453	356,998

Source: Department of Foreign Employment

### Departure

Approved workers must be sent abroad within the time specified in their contracts, or if no time is specified, within three months of the sticker being affixed to their passports (Section 20). All migrant workers approved for departure must depart from the national airport in Kathmandu. It is illegal to depart from a foreign airport, for example from India, without the express permission of DoFE (Section 22).

## 5.3 The Migration Process for Most Migrant Workers

### Use of Individual Agents

In practice, experts believe that very few migrant workers are recruited via response to advertisements for existing positions, particularly those considering low-wage positions. Reasons given were that most recruitment agencies are based in Kathmandu, and potential migrant workers are scattered around the country with limited access to national newspapers to view advertisements, and they also do not have time and/or financial means to travel to Kathmandu for an interview. Instead, most use the services

of an individual agent or agents to identify possible positions and complete required documentation.

As a result, Nepal has a thriving and entrenched industry of foreign labor middlemen and women.<sup>115</sup> In this study, 34 out of 54 migrant worker participants reported using an individual agent to find their employment, at least on their first journey abroad. Another ten did not state whether an individual agent was involved or not. Most of those who clearly stated they did *not* use an individual agent traveled independently through a family member or friend already abroad, or they had worked abroad previously and so were acquainted with either a recruitment agency or an employer. Nobody mentioned using the official government process of applying for an advertised position.

For most participants, the individual agent was someone personally known to the migrant worker or someone close to the migrant worker—either a relative or neighbor. This is consistent with the findings of other studies, including a 2013 study by The Asia Foundation which found that 35 percent of Nepali migrant workers were personally acquainted with their individual agent and another 57 percent were introduced to their individual agent through a family member, neighbor or friend.<sup>116</sup> Consequently, migrant workers have great trust in their agents to look after their interests.

Individual agents inform the prospective migrant workers about potential destinations and positions. Workers explained that they would hand over their passport and an amount of money to cover recruitment fees and in the best case scenarios, the agents returned with a job in hand and the visa obtained within three months. The migrant worker would then travel to Kathmandu for the medical check-up, potentially the orientation and/or skills-training, and final departure. In some cases, a chain of individual agents was used, both a local agent and an agent in Kathmandu, and possible others in between.

## **Reasons for and Consequences of Using Individual Agents**

Individual agents are able to simplify a complicated and time-consuming process for migrant workers by serving as intermediaries, informing potential migrants about available jobs in particular countries, explaining the terms and conditions of work, arranging necessary documentation, including obtaining travel documents, and applying for labor permits, and liaising with recruitment agencies in Kathmandu.

Recruitment agencies interviewed for this study also noted several benefits to using individual agents as intermediaries with workers. First, agents vouch for the abilities of workers, reducing the risk that a migrant will be unable to perform the relevant position. As the director of one recruitment agency noted:<sup>117</sup>

We mostly receive CVs through agents; a few also come directly to us. It is better for us if they come through agents because they usually know the workers. When an individual comes

directly, there is no guarantee of who he is or where he comes from. We have 15–18 agents, and we also have branch offices in two places in Jhapa.

Individual agents also attest to the reliability of the migrant worker, lessening the risk that the worker might decide against going abroad after the documentation is complete and paid for. As another recruitment agency director explained:<sup>118</sup>

If workers come independently, it causes problems for us because we do not take any money initially. If such a worker does not arrive after his/her visa is approved, that would be problematic for us. If the worker has come through an agent, the agent is in charge and generally there are no cases of workers not going once the process is initiated.

Thus while the law is clear that the process of recruitment should be public and transparent, there are strong incentives for recruitment agencies, individual agents, and migrant workers to involve intermediaries in recruitment.

At the same time, the use of agents exposes migrant workers to a host of additional risks. For example, under the individual agent system, prospective migrants are required to pay up-front even if no position exists at that time—the agent may simply take the money, or may be unsuccessful in finding work for the worker and refuse to return the fee. Use of individual agents also leaves migrant workers with very little information and control over their migration experience—they have little information regarding the correct fees they should be paying, or choosing a reputable recruitment agency. The Asia Foundation found in 2013 that in fact half of Nepali returned migrant workers did not know if their agent worked for a recruitment agency.<sup>119</sup> Each agent in the chain will also charge their own commission to the recruitment agency, and ultimately inflate the fees charged to the worker.

Further, because migrant workers are highly dependent on their agents to liaise with recruitment agencies on their behalf, they have little opportunity to choose or negotiate the terms of their employment abroad, including the country of employment, the type of work or the salary. One respondent, a male returnee from Sinurjoda Village in Dhanusha District described his experience:<sup>120</sup>

I really wanted to go to Malaysia because some of my friends had been working there for some years and said they earned very good money there. However, when my agent brought back my passport with the visa stamp, he informed me that the visa was for Saudi Arabia. I could not say no because the agent had already brought the visa and cancelling that would mean additional expense.

Individual agents may also provide workers with fake or forged documents, exposing the worker to potential criminal charges and to all of the other problems associated with irregular status.



For all of these reasons, many of the stakeholders interviewed in this study viewed the individual agent system as an exacerbating factor or cause of many of the problems experienced by migrant workers throughout the migration cycle.

## 5.4 Summary

Nepal's foreign employment sector involves several public institutions and a broad range of individual and institutional private actors who profit from the recruitment and placement of workers abroad. The FEA 2007 regulates many of these private actors and allows for the imposition of sanctions, but the monitoring oversight provisions are relatively weak. This makes migrant workers, many of whom have little information or control during the recruitment process, vulnerable to a wide range of harms, as discussed in the next chapter.

## 6. Abuses and Labor Violations Experienced by Nepali Migrant Workers

Labor migration from Nepal, especially for low-wage workers, is notoriously high-risk. Comprehensive information about the frequency of various types of harms is unavailable—the government does not collect this data and no large-scale quantitative studies have been conducted to examine the prevalence and frequency of harms. Nevertheless, a number of qualitative studies have documented the wide range of abuses and labor violations Nepali migrant workers regularly experience, particularly when migrating into low-wage and poorly regulated industries such as construction and domestic work.<sup>121</sup> These occur at all stages of the migration process, including before departure, in transit, and in the country of work.

While it is beyond the scope of this study to fully document the nature and extent of abuses that occur during the process of migration, the experiences reported by study participants reflect the range of harms Nepali migrant workers suffer more generally, and are broadly consistent with other studies in this field.<sup>122</sup> Those harms are described here to provide context for evaluating the effectiveness of Nepal's laws, policies, and practices in ensuring workers' rights in relation to the common harms, and the mechanisms in place to enforce laws and to provide redress.

## 6.1 Harms Experienced Pre-Departure

Half (27) of the 54 migrant workers participating in this study reported experiencing a problem during the recruitment and placement process. Their experiences, supported by the opinions of other stakeholders, suggest that pre-departure harms, including fraud, misrepresentation and outright theft, are systematic and widespread in Nepal, as reflected across various studies by both Nepali and international human rights organizations. Other common pre-departure harms include: excessive fees; delayed or cancelled departure; contracts and required documentation not provided in time or at all; or contracts not provided in Nepali.

### Excessive Fees

One of the most common harmful practices reported by migrant workers was overcharging of recruitment fees. Fourteen of the 54 migrant worker participants in this study were charged fees above the government mandated maximum amount of NPR 70,000 (approximately US\$ 700) for employment in the Gulf countries.<sup>123</sup> Many other migrants believed they had paid more but could not be sure because they were asked to pay a number of smaller amounts over several months and did not receive receipts. Only four stated having paid less than the government stipulated maximum, though these workers had gone abroad prior to DoFE's fee-setting notice in December 2010.

The highest amount demanded by an agent was NPR 500,000<sup>124</sup> (approximately US\$ 5,000) and the highest amount paid by a migrant was NPR 400,000 (approximately US\$ 4,000).<sup>125</sup> In several cases, the migrant was forced to sign a receipt that stated that the worker paid only the amount allowed under law, which did not reflect the actual fees charged, making it difficult to prove the worker had been overcharged.

Consistent with the experiences documented in this study, Amnesty International found in 2011 that 42 out of 57 workers interviewed had been charged fees above the maximum permitted by Nepali law.<sup>126</sup> To pay these fees, many migrant workers take out loans, often from unapproved moneylenders as noted in the previous chapter, at exorbitant rates of interest.<sup>127</sup>

The illegal overcharging of fees, non-transparency of fees, and associated high-interest debt places migrant workers in a particularly vulnerable position. The magnitude of these debts leaves workers feeling trapped and unable to refuse a position pre-departure or demand a higher salary, ultimately contributing to situations of coerced employment.<sup>128</sup> It also makes workers less likely to challenge exploitative or harmful working conditions or wages less than the agreed salary once abroad because of a fear of being terminated, creating conditions for debt bondage.<sup>129</sup>

## **Delayed or Cancelled Departure and Theft of Fees**

In most cases, the worker took out a loan and paid purported recruitment fees on the promise that a position would be arranged within a few months. However, in many cases the employment did not begin until much later than promised, in some cases up to a year later, if at all. During that time, interest was accruing on the debt the worker had assumed. As one interviewee from Sinurjoda, Dhanusha, recalled:

I gave my passport to an agent. He said that he would give it to a recruitment agency and would inform me as soon as possible but he didn't come back. Six months passed but I never heard back from him. I had also given him NPR 100,000 when I handed him my passport. The interest rate was 3 percent per month (36 percent per annum) and my debt was increasing day-by-day. One day I finally got hold of him and we had an argument. Then I was sent abroad.

Eight prospective migrant workers interviewed were never sent abroad at all and the agent never returned the fees they had paid.

## **Contracts and Other Required Documentation Not Provided or Provided Late**

Written contracts notify prospective workers of the terms and conditions of employment to enable them to make an informed decision about whether to accept the position. Those contracts also subsequently serve as critical evidence of the parties to the agreement, and the agreed terms of the employment, that enables workers to seek redress for work conditions or wages different from those agreed pre-departure. The contracts reviewed for this study, and the experiences recounted by the workers interviewed, revealed that contracts and other documentation were incomplete, provided late, or not provided to workers at all.

The FEA 2007 and the 2008 Rules are ambiguous regarding the contracts to be provided to the worker (discussed in greater detail in Chapter 7) but the authors of this report assume, based on legal advice, that two contracts are required for each worker—one between the migrant worker and her recruitment agency (the recruitment contract), and one between the migrant worker and her overseas employer (the employment contract). Not a single migrant worker, however, reported receiving a recruitment contract and experts were unaware of such contracts being provided. These migrant workers thus had no record of the recruitment agency's identity and contact details or its obligations toward him or her.

Employment contracts were given more regularly, but still only 17 of the 54 workers included in this study mentioned an employment contract. Those that did receive one were usually handed the contract by the individual agent at their hotel in Kathmandu or at the airport immediately before departure. Only five workers received their

employment contract several days before departure with enough time to read and consider the contents, and only three received them at the recruitment agency where they could discuss the terms and conditions directly with the agency and ask questions.

Most of the contracts received by workers were not in Nepali, as required, but in English and Arabic which many workers could not understand. A male returnee from Dhanusha, said:<sup>130</sup>

The agent and the recruitment agency told me that I would work in a Saudi hotel and the company would pay me 700 Riyals, including lodging and food. However, I saw my contract only at the airport gate and as I could not read in English, I did not know what it contained. Upon arrival, I found I was to work on a farm. I had to take care of a large number of animals including camels, dogs, donkeys, and goats. Also, the agent in Saudi Arabia handed me over to a *kafeel* [employer-sponsor], who said that I would get only 400 Riyals for working on the farm. My fellow workers who worked there for several years told me that the *kafeel* would pay the total sum at the end of 3 or 4 years. He never paid me anything. Therefore, after three months, I ran away to a different employer.

Note that even the Nepali requirement is insufficient for those workers who speak one of the 61 other languages in Nepal.

On reaching the destination country, other problems emerged with documents obtained in Nepal. Some found that their visa and work permit or their medical certificates had been falsified by their agent in Nepal. Workers in those situations may be forced to incur considerable extra cost—in both expenses and time—to obtain official documents before working, or could be forced to return home.

### **An Analysis of Sample Employment Contracts**

The research team obtained 12 sample employment contracts in the course of the study. Some of these contracts were provided by a worker who had returned from abroad, some by workers about to depart, and others by recruitment agencies interviewed.<sup>131</sup> In the latter case, the contracts had been approved by DoFE before granting a final work permit, but were not necessarily the contract received by the worker. The contracts were on the letterhead of either the employer or the manpower agency in the destination country.

In general, the contracts met the minimal Nepali legal requirement of setting out the terms and conditions of employment, including remuneration. They specified employment for a two-year period, free food, and accommodation, and guaranteed medical care and insurance. The contracts reviewed were for

jobs as a taxi driver, cleaner, laborer, tile maker, tailor, and security guard, and these positions were clearly stated in the contract. Nevertheless, these sample contracts—all of which had been reviewed and approved by DoFE—were deficient in several respects.

- Four of the contracts were prepared in English and Arabic, while the remaining eight contracts were in English only. None of the contracts were in Nepali as required.
- Most of the contracts (all of those in English) were less than one page, and while they described in clear and simple language the salary and conditions, they did not include key information regarding what would happen in the event of a breach of the contract by either party, dispute resolution or annual leave.<sup>132</sup>
- Seven of the 12 contracts were undated, and none clearly stated the commencement date of employment. This leaves open the possibility of delayed employment, preventing workers from being able to plan their departure and loan repayments, and leaving workers without enforceable rights under the contract when employment did not commence within the time frame initially promised by the individual agent/agency.
- All contracts but two were ambiguous about the place of work. Although the country of employment could be identified by the letterhead and reference to the applicable law, only two contracts specified the name and location of the employer. This ambiguity leaves the workers without an enforceable contractual right when sent or moved to a place of work different from that initially promised by the individual agent or agency.
- None of the contracts but one prohibited the employer/manpower agency from transferring the worker to another location.<sup>133</sup>
- The contracts did not contain clear guidance for the workers on how to resolve disputes with an employer. All contracts specified that any disputes would be resolved by the labor law of the country of work. Only one contract had a more specific dispute resolution clause—namely that any complaints made by the employee are the responsibility of the Nepali recruitment agency (although the recruitment agency was not party to the agreement, calling into question the enforceability of that provision).
- Apart from the one example above, the Nepali recruitment agency was not referenced in the agreements and was not a party to any agreement.

- Only one contract, for work in Saudi Arabia, had a termination clause. That clause only addressed what would happen if the employee “refused to work”—he would have to return to Nepal at his own expense. It did not mention under what circumstances the worker could terminate the contract.

DoFE’s approval of those contracts held by returned or departing migrant workers, despite their failure to meet the requirements of the FEA 2007, is a matter of concern and suggests insufficient review before giving final approval for workers to depart.

Furthermore, the review raises an additional concern that foreign labor permits are being issued without evidence that the prospective employee has seen or reviewed the contract. Only five of the eleven contracts stamped by DoFE were signed by the prospective employee. In all other cases only the employer had signed, or no one had signed. In two cases, the contract was blank with a list of ten or more workers and their salaries attached in a table. It could be that some of the employment contracts reviewed by DoFE were never seen by the migrant worker at all.

## 6.2 Harms Occurring in Transit

Some workers encounter problems while in transit from Nepal to their employment destination. These harms principally include lack of freedom of movement during transit, being stranded in a transit location, or being abandoned in the destination country before employment commences.

These problems are particularly acute for migrant workers sent abroad outside the regulated channels by individual agents or recruitment agencies. The workers, most frequently sent through India, are highly controlled during their transit by handlers who are not necessarily the original agents. *Verité* reported migrants being held in hotels, not allowed visitors and not permitted to leave their room except to eat at a specified restaurant, and being constantly monitored by hotel owners at the behest of individual agents.<sup>134</sup>

On arrival in the destination country, even those workers who went through legal channels were sometimes not met by an agent or employer. *Verité* reported workers waiting in airports without money for up to several days.<sup>135</sup> Similarly, a worker interviewed for this study who had traveled to Qatar believing he would work as an electrician explained:

The agent in Nepal had given [me] the number of the agent in Qatar. I called him upon arrival at the Qatar airport. It was evening. He said that he would come to collect me in the morning. I again called him in the morning and he said he would come in the evening. I stayed there for two days before he came to collect me.<sup>136</sup>

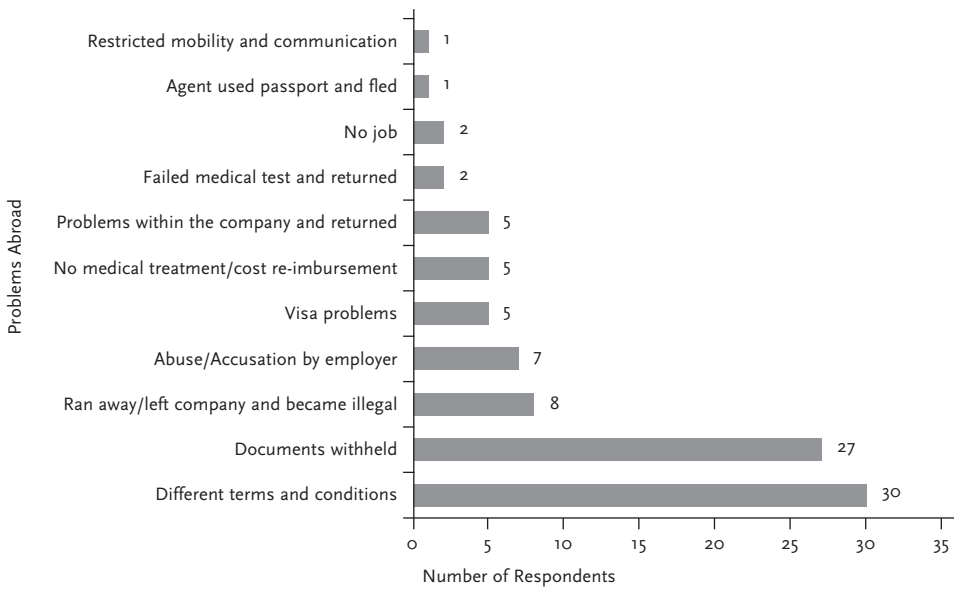
A number of cases reported to DoFE (see Section 8.1 on DoFE below) also described recruitment agencies defrauding migrant workers by leaving them stranded in a transit country. Among the 214 case files reviewed as part of this study, was a case of 21 migrants who alleged that the recruitment agency had left them stranded in Delhi and Tanzania.<sup>137</sup> In another case, several migrant workers filed claims against recruitment agencies for leaving them stranded in Bangkok, when they believed they were travelling to Canada.<sup>138</sup>

## 6.3 Harms Occurring in the Destination Country

The harms experienced by Nepali migrant workers in the Gulf have recently been the subject of much media attention, particularly the experiences of Nepali construction workers in Qatar.<sup>139</sup> These harms range from labor violations such as non-payment or delayed payment of wages and long working hours, to more serious physical and psychological harm (see Figure 4). The vulnerability of migrant workers to harm is often attributed to the *kafala* system by which a migrant worker is bonded to a sponsor (*kafeel*) and thus has limited avenues to challenge poor conditions without threat of unemployment and automatic deportation.



**FIGURE 4: Problems Faced Abroad by 43 Migrant Worker Study Participants**



## Labor Violations

Common problems reported by workers interviewed for this study included: excessive working hours; wages lower than the stipulated salary; and failure to provide promised leave-days or food and accommodation. Workers also reported that their employers failed to provide them with medical services when they were sick and injured, or refused to reimburse medical expenses as had been promised in the contract. Along with violations of the contract, these harms may also have violated national labor laws in the destination country (although note that domestic workers are not covered by labor laws in most countries in the Middle East).

Of the 43 returned migrants interviewed for this study, 30 said they encountered conditions different from those promised pre-departure. In most cases, the employer simply did not abide by the terms of the contract signed in Nepal, but in some cases workers reported substitution of the contract with an entirely new agreement upon arrival in the destination country. Some migrants refused to take up the work offered in the destination country and came home as soon as possible. Others felt compelled to work regardless of the conditions because of the debt they owed in Nepal.

Confiscation of Documents

Another common set of problems in the destination country involved the workers’ documents. Around half of all workers interviewed who had reached the destination country (27 of the 43) had their passports confiscated by their employer upon arrival. Migrants in general believed confiscation was a common practice, and did not realize how problematic it was until they sought to retrieve their documents. One of the migrants said:

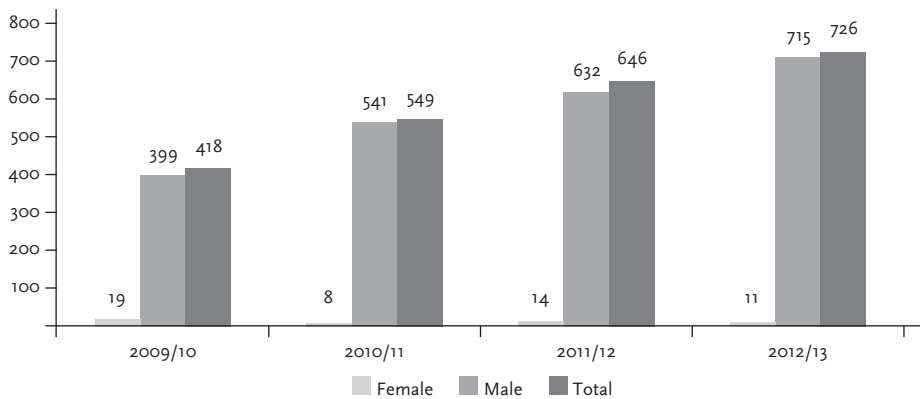
They take away our passports as soon as we reach [the destination country]. They instead issue us an *iqama* [residence permit]. Whenever we have to go out, the *iqama* serves as the valid document that contains details such as our name, the employer company, our nationality, our visa, and other things. They do not allow us to keep our passport with us because they are afraid we would run away from the company. In some cases, they do not even give our passports back to us when we complete our contracts.<sup>140</sup>

In one case, the agent in the destination country stole the worker’s passport and used it to travel back to Nepal, leaving the worker without any documents.

Deaths

A highly publicized, and very serious, harm suffered by some Nepali migrant workers abroad is loss of life. The number of deaths of migrant workers abroad has increased over the years as the number of migrant workers has increased (See Figure 5).

FIGURE 5: Total Number of Deaths of Nepali Workers Abroad Reported to the FEPB



Source: Foreign Employment Promotion Board

In both 2011/12 and 2012/13, the largest compensation claims for deaths abroad were from families of workers who died in Malaysia, followed by Saudi Arabia, and then Qatar.<sup>141</sup> In 2013 alone, at least 185 Nepalis were reported to have died while working

in construction in Qatar.<sup>142</sup> The government's own figures record 151 workers dying in Qatar that year (See Table 4).<sup>143</sup> An unknown number of other workers may have died but their cases were not reported to the FEPB, either because the family was unaware of the FEPB's compensation scheme or the worker was undocumented and thus ineligible.

The leading cause of death in cases submitted to the FEPB is cardiac arrests. Some argue that cardiac arrest is made more likely by unsafe working conditions on large construction projects, such as being forced to work in excessive heat or without appropriate safety precautions. For women migrant domestic workers, suicides are the leading reported cause of death, followed by deaths occurring when domestic workers attempt to flee terrible working conditions and abusive employers.<sup>144</sup>

**TABLE 4: Nepali Migrant Worker Deaths by Country and Cause 2012/13**

Serial No.	Country	Reasons for Death								Total		Total
		Cardiac Arrest	Traffic Accident	Natural Death	Suicide	Heart Attack	Work Place Accident	Murder	Other	Male	Female	
1.	Malaysia	14	11	4	34	12	2	0	176	251	2	253
2.	Saudi Arabia	4	70	80	17	3	17	0	14	205	0	205
3.	Qatar	81	5	0	15	4	4	2	40	151	0	151
4.	U.A.E	13	6	7	3	4	2	0	12	46	1	47
5.	Kuwait	0	5	0	3	7	0	0	7	17	5	22
6.	South Korea	2	1	1	3	1	0	0	6	14	0	14
7.	Bahrain	0	3	7	1	0	2	0	1	14	0	14
8.	Oman	0	1	4	1	0	0	0	1	7	0	7
9.	Lebanon	1	0	1	1	0	0	0	0	1	2	3
10.	Japan	0	1	0	1	0	0	0	0	2	0	2
11.	Israel	0	0	1	1	1	0	0	0	2	1	3
12.	Russia	0	0	0	1	0	0	0	1	2	0	2
13.	Sri Lanka	1	0	0	0	0	0	0	0	1	0	1
14.	Italy	0	0	1	0	0	0	0	0	1	0	1
15.	Afghanistan	0	0	0	0	0	0	0	1	1	0	1
Total		116	103	106	81	32	26	2	259	715	11	726

Source: Foreign Employment Promotion Board

## Other Physical Harm

Female migrants who worked in private homes were particularly vulnerable to abuse by their employers and were unable to enlist help from friends and co-workers because of their isolation.<sup>145</sup> The male migrant workers interviewed for this research primarily described experiencing labor law violations while most female workers reported verbal and physical abuse at the hands of their employer, usually for perceived “mistakes” by the worker. In some cases, the employer accused the worker of criminal behavior as a form of punishment. Abuse and/or accusations of wrongdoing were reported in 7 of the 43 cases examined in this research. In one case, a female worker alleged that her agency in the destination country (the employer institution) committed serious criminal abuse against other women placed by the agency, including wage theft, beatings, and torturing women who attempted to run away by pulling out their fingernails. One study estimated the ratio of female migrant workers who face abuse and illness compared to male migrant workers, irrespective of the country of destination and sector of work, as 67:40.<sup>146</sup>

## Isolation and Powerlessness Abroad

All of the statements given by migrant workers revealed a precarious existence in the country of work with little information, bargaining power or control over their environment. Many described being moved by their *kafeel* from location to location, consistently demanding to be paid but being ignored, and having little sense of what the future held or how to improve their situation. Some took action to protest non-payment of wages such as industrial action, or in the domestic sphere locking oneself in a room, but these actions were largely unsuccessful, and invariably resulted in the worker being deported or otherwise punished. Others found their own work, but this presented its own challenge as the worker was then undocumented and faced new problems including susceptibility to detention and deportation.

## Meena's Experience

*I worked in Kuwait and I suffered a lot there; I changed a number of houses. The first house I worked in I stayed for ten days before they returned me back to my agent. The second house I was sent to had another Nepali woman and we used to work together. There were about four young daughters in the house. One day there was a fight and the Nepali woman called me upstairs but the employer prevented me from going up to see her; they locked me in a room downstairs from where I called my agent. I don't know what happened to the Nepali woman after that, my agent took me out. After that my agent sent me to another house where I worked for a while, but my employers would lock me in the house when they went on vacation. Once the building caught fire and I was locked in the apartment and had to be rescued by the police. When my employers returned I refused to work for them and I was sent back to my agent again. My agent promised to put me to work in another household and I stayed in the office for about 15 days, but after that they refused to give me any food and my agent disappeared. I then found my own work but it did not work out. A woman from Mumbai helped me to find work as a tailor, but the police caught me and I was put in prison, and then they sent me back to Nepal.<sup>147</sup>*

## Attribution of Responsibility for Harm

The migrant workers in this study invariably blamed pre-departure and in-transit harms on the individual agent with whom they had direct contact. In all cases it was unclear whether the individual agent was registered or unregistered. It was also unclear whether the individual agent was acting at the behest of a recruitment agency, and if so, which recruitment agency. The worker rarely if ever came into contact with the recruitment agency and so was unaware of the recruitment agency's part in any harm suffered. In a number of cases, the migrant worker did not even know which recruitment agency had sent him or her. In other cases, the harms occurred before the migrant worker had been linked to a recruitment agency, for example where the individual agents had absconded with the recruitment fees that the migrant workers had paid upfront.

In respect to harms encountered abroad, migrant workers also blamed their agents and recruitment agencies for misleading them about the terms of the work, but they also held their employers responsible for not abiding by the terms of the contract. In a small number of cases, as in the case above, workers identified the manpower agency in the destination country as the main perpetrator.

## Becoming Irregular

Upon arriving in the Gulf, many workers found that the work was not what their agents had promised—the conditions were different, the type of work was different, and the salary was invariably lower. Although most migrants chose to accept these inferior conditions, some refused and left their employer. Others were forced to leave due to their position being terminated or the company shutting down.

As soon as a worker left a sponsor, he or she became an irregular migrant in the country of destination. Working irregularly arguably gave workers more independence and ability to choose their work, but they were also more vulnerable to destitution, arrest, and deportation. A male returnee from Dhannusha District described the experience of working without papers in Saudi Arabia:

*I worked on a farm in Saudi Arabia for my kafeel for two months. My kafeel used to scold and beat me and never paid me for my work. With the help of three friends, I ran away from there at two in the morning. Since my passport was with the kafeel, I began working illegally doing any work that came my way. I worked as a painter, an electrician, a manual laborer, and so on for three years.*

*As soon as my new employers found out that I was working illegally, they would stop paying and would threaten to call the police if I insisted on payment. I never worked for more than three months in any place. I was paid very little, only 50-100 Riyals per month, which I usually spent on accommodation. I used to eat very little because I could not afford more on my earnings. If I managed to save any money, the police used to take my savings when they arrested me—they would keep me in the police station overnight and then set me free. I never managed to save any money.<sup>148</sup>*



## 7. Laws Relevant to Foreign Employment

### 7.1 Nepal's Legal System

Nepal has a unique hybrid legal system that combines a Hindu legal tradition with aspects of civil law from Europe as well as a strong common law influence from neighboring India since 1950.<sup>149</sup> For example, Nepal has a civil code based on the Napoleonic system that incorporates Hindu rules about treatment of members of different castes. At the same time, it has an adversarial judicial system based on the British common law system, which, among other things, allows courts to create binding precedent through their decisions.

At the time of writing, due to ongoing post-conflict transition, Nepal's government was operating under an interim constitution from 2007 (The Interim Constitution of Nepal, 2063 (2007)). A new constitutional assembly, elected in 2013, had begun the task of drafting a permanent constitution. Pending a new constitution, drafting of new or amended legislation has largely been suspended since 2008.

Protections against many of the harms described by migrant workers in the previous chapter, particularly those experienced in Nepal, are included in the domestic legal framework, whether in the constitution, legislation, and subordinate rules. International treaties that Nepal has signed and ratified also contain a number of protections for migrant workers both at home and abroad. These sources of rights and the nature of those obligations are described below.



## **The Interim Constitution of Nepal, 2063 (2007)**

The Interim Constitution came into force on January 15, 2007, as a framework to facilitate the transition from a unitary constitutional monarchy to a federal republic. As of early 2014, the first and then second constituent assemblies created under the Interim Constitution had not yet agreed on a new constitution, so the Interim Constitution continues to apply. It is the law of the land and laws inconsistent with the constitution are considered void, to the extent of the inconsistency.

Part 3 of the Interim Constitution contains “Fundamental Rights.” Rights relevant to access to justice for migrant workers include:

- The Right to Equality, including equality before the law and equal protection of the laws (Article 13(1)).
- The right to freedom from discrimination, on grounds of religion, race, caste, tribe, sex, origin, language or ideological conviction (Article 13(2));
- The right to employment and social security (Article 18);
- The right of women to not be discriminated against merely for the fact of being a woman (Article 20);
- The right of indigent people to free legal aid, in accordance with the law (Article 24(10));
- The right to obtain information of any matters of his/her own or of public importance (Article 27);
- The right against exploitation including trafficking, slavery, serfdom or any form of forced labor (Article 29);
- The right to a constitutional remedy by bringing a case in the Supreme Court, for the enforcement of any rights contained in Part 3 of the Constitution.

## 7.2 The Foreign Employment Act 2007 and Foreign Employment Rules 2008

The principle law pertaining to migrant workers is the Foreign Employment Act (FEA) 2007. This act was passed after considerable international and domestic civil society lobbying and replaced the Foreign Employment Act 1985 and its subsequent amendments. It is supplemented by the Foreign Employment Rules 2008 (the 2008 Rules).

According to its preamble, FEA 2007 is intended to “make foreign employment safe, managed and decent, and to protect the rights and interests of both the workers who go for foreign employment and [recruitment agencies].” The law creates a new framework for regulating labor migration; it identifies the functions and responsibilities of various government agencies and private parties; sets forth administrative requirements for recruitment agencies; and creates an oversight and monitoring system.

Although much of the act is directed at regulation of the foreign employment industry, it does include some provisions that specifically address protection of migrant workers from abuse and exploitation, and that are intended to establish transparency within labor migration procedures. It also includes protections against discrimination and child labor, including:

- A prohibition against sending a minor (defined as any person under the age of 18) abroad for employment (Section 7);
- A prohibition against gender discrimination in the course of “sending workers for foreign employment,” unless an employer requests a specific gender (Section 8);
- A requirement that foreign employment institutions “provide reservation to women, Dalit, indigenous nationalities, oppressed classes, backward areas and classes, and people of remote areas” in numbers that the government may prescribe (Section 9);

In addition, the act contains several provisions that, if effectively implemented and enforced, could provide workers with significant pre-departure protections within the migration process:

- *Protection from confiscation of personal documents by Nepali recruitment agencies*—if a recruitment agency wishes to hold the passports of migrant workers before their departure, it must seek government approval (Section 18). Criteria for granting or withholding approval are not specified. Note that this only applies in Nepal and does not prevent “employer institutions” from confiscating a worker’s documents once the worker arrives in the destination country.

- *Protection from delayed departure*—recruitment agencies are required to send workers abroad within the period described in the contract, or within three months of obtaining departure approval from the government if no period is specified. If the departure does not occur as above, the agency must reimburse any fees paid by the worker together with 20 percent per annum interest within 30 days (Section 20(2)).
- *Protection from changed conditions prior to departure*—if the worker decides not to depart because the terms and conditions of work are different from those advertised by the agency and approved by the government, the recruitment agency must refund all fees paid by the worker, including the visa fee (Section 20(3)).
- *Protection against abuses at the hands of an unlicensed agent or agency*—if an unlicensed recruitment agency (Section 44) or individual agent (Section 43) either sends a migrant worker abroad, or fails to do so after taking money from the worker, the perpetrator is required to compensate the worker for all expenses the worker incurred, including all fees charged, as well as an additional 50 percent of fees paid.<sup>150</sup> If a worker has already traveled, the agent must also repay expenses of travel.
- *Right to an employment contract and a recruitment contract in Nepali*—Before departure, the worker must sign a contract between the worker and the employer or its agent, setting forth the terms and conditions of employment.<sup>151</sup> The recruitment agency must translate the contract into Nepali,<sup>152</sup> and must ensure the worker understands the “terms and conditions and provisions of remuneration” before signing (Section 25). The recruitment agency must also sign a contract between itself and the worker.<sup>153</sup> The recruitment agency must present a “copy of the contract to be made between the employer institution and workers,” and “a copy of the contract to be made between the licensee [recruitment agency] and workers,” to DoFE prior to approval to send workers for foreign employment (Sections 15(g) and (h)), and prior to obtaining the permission for the individual worker(s) to travel (Sections 19(d) and (e)). The recruitment agency must provide two copies to DoFE, which must certify them and return one copy of the contract to the worker (Section 25(2)).<sup>154</sup>
- *Insurance*—Before departure, the recruitment agency must purchase insurance for the worker covering death or mutilation during the period of employment (Section 26). For more detail on insurance protection, see Section 8.4.
- *Orientation Training Requirement*—Before departure, all prospective migrant workers must attend an orientation training (Section 27).<sup>155</sup> Under the 2008 rules, this must cover topics such as occupational health and safety, the laws of Nepal regarding foreign employment, and information about destination countries.<sup>156</sup>

- *Protection from over-charging*—If a recruitment agency charges fees above the government-prescribed maximum, the agency must return the excess fees to the migrant worker and is subject to a fine (Section 53).
- *Protection if employment differs from the contract*—If the work in the destination country differs from the terms set out in the contract, the worker can at a minimum receive a return of recruitment fees (Section 36). If the worker can prove intent to mislead on the part of the recruitment agency, he or she can recover the “shortfall in facilities or remuneration,” and the recruitment agency can be prosecuted (Section 55). These provisions are discussed in more detail under Section 8.1 Department of Foreign Employment.

The DoFE and the Foreign Employment Tribunal, both created by the FEA 2007, are responsible for enforcing the above protections.

## 7.3 Human Trafficking and Transportation (Control) Act 2007

In 2007, Nepal also passed a Human Trafficking and Transportation (Control) Act, (the HTTCA), which prohibits the two activities of “trafficking” and “transportation.”<sup>157</sup> The HTTCA does not preclude prosecution under other legislation, and it is possible to bring claims involving labor migration under the HTTCA, as well as the FEA.

The offenses under the HTTCA are ambiguous regarding trafficking for labor exploitation. The offense of “trafficking” primarily addresses prostitution and sex-trafficking related crimes.<sup>158</sup> It does, however, also include the act of “buying or selling a person for any purpose” (akin to slavery), which could potentially include cases of labor trafficking within Nepal or internationally.<sup>159</sup>

The “human transportation” provision of the HTTCA also could be interpreted to cover migrant workers who are recruited and sent abroad for foreign employment by means of fraud or other acts of deception or coercion. The offense of “human transportation” includes “tak[ing] a person out of the country for the purpose of buying and selling” the person; or taking a person by any means, including among others, “enticement, inducement, misinformation, forgery, tricks, coercion” and taking the person to any place in Nepal or abroad, or handing the person over to someone else “for the purpose of prostitution and exploitation.”<sup>160</sup> This offense, broader than trafficking, aligns more closely with the United Nations definition of trafficking.<sup>161</sup>

Advantages of using the HTTCA include a right to confidentiality (Section 5(b)), a shifting of the burden of proof from the worker to the accused to prove that the offense

did not occur (Section 9), a right to have a lawyer present (Section 10), and considerably higher penalties than under the FEA 2007. The offense of buying and selling a person attracts a punishment of 20 years imprisonment, and a fine of NPR 200,000 (Section 15(1)(a)). The offense of human transportation for labor exploitation attracts a prison term of seven to ten years (Section 15(1)(g)). Furthermore, the prosecution can move forward on the basis of a court certified statement by the victim, and the victim need not appear in court following the taking of the certified statement (Section 6).

Trafficking cases are investigated by police and prosecuted in district courts. More information about using the HTTCA is set out in Section 8.3—Courts.

## 7.4 Civil Code of Nepal (*Muluki Ain*)

Nepal's Civil Code, essentially a combined civil and penal code, was most recently updated in 1963 and draws from Hindu legal principles as well as civil law principles of continental Europe.<sup>162</sup> A recent draft criminal code includes a much wider range of offenses, including against children and women, but has not yet been adopted.<sup>163</sup>

The General Code prohibits taking a person out of the country for sale (Chapter 11(1)) and also prevents slavery and bonded labor (Chapter 11(3)). The chapter on "Cheating" also includes several offenses that commonly arise in the context of foreign employment, such as fraud, deception, and misrepresentation.<sup>164</sup>

Migrant workers may seek to have foreign employment actors charged with these offenses by submitting a complaint to the police. The case would then be prosecuted in the regular district courts. However, it is possible that the district courts, as well as the Supreme Court, would find that in many cases of overlap, migrant workers should proceed under the FEA 2007—the Civil Code notes that if a specific law has been created for any matter, cases should proceed under that law.<sup>165</sup>

Further, while compensation is available under the Civil Code, it is generally less than that available under the FEA 2007. For example, in cases where the migrant worker was cheated by an agent out of his or her fees, the code provides only for compensation in the amount of the fees paid, whereas under the FEA 2007, the victim would receive an additional 50 percent of that amount.<sup>166</sup>

## 7.5 Gaps and Limitations in the Domestic Legal Framework

Nepal's FEA 2007 and 2008 Rules regulate the conduct of recruitment agencies and agents, and establish the roles and responsibilities of various government agencies and institutions throughout the labor migration process. They address many of the harms

most commonly suffered by migrant workers, and establish clear responsibilities on the part of recruitment agencies and penalties for failure to meet these standards. Nevertheless, the act and rules remain limited in several important respects, discussed in this section. They are also not effectively implemented and enforced, as discussed later in this report.

### **Absence of a Rights-Based Approach**

An overarching limitation of the FEA 2007 and the 2008 Rules is the failure to recognize migrant workers, or intending migrants, as rights holders. The word “rights” is not mentioned anywhere in either the law or rules except in the brief preamble. Although obligations on various parties are clear, they are not expressly linked to rights of Nepalis in the labor migration process. The tone of the act and the rules is one of regulatory efficiency, rather than of rights and protections for a relatively vulnerable population.

For example, the act and the rules do not mention the “right” of an individual to safe labor migration, or to make an informed choice regarding foreign employment. Furthermore, while the act and rules provide for redress and compensation, these provisions are drafted as penalties and fines as applied to the wrongdoer, and not as the right of the individual worker to a remedy or other form of justice. Consistent with this, most functions of the various government agencies are expressed in discretionary (rather than mandatory) language, and with limited guidance as to their implementation. In respect to a number of government obligations, the lack of corresponding rights held by workers means the worker does not have a cause of action if an obligation is not fulfilled, making enforcement and accountability difficult to achieve.

### **Vague Contract-Related Obligations**

The law is very vague regarding the specific terms that should be included in contracts between migrant workers and their recruitment agencies or employers. FEA 2007 and 2008 Rules require only the “terms and conditions of service,” remuneration, and terms to be observed by the parties. They do not specify, for example, what terms and conditions are acceptable, and whether those terms should include specifics as to the location of work, the commencement date for the position, housing, hours of work, leave time, training required for the job, other health and safety factors, calculation of wages and method of payment, or other information that would allow a worker to make an informed decision as to whether to pursue and accept the position. Nor do they require contractual breach or dispute resolution clauses.

The lack of a clearly defined and mandated agreement clearly setting out a worker’s rights with respect to the recruitment agency creates a significant obstacle to workers’ access to justice, as discussed in greater detail below.

Finally, the act and the rules provide no guidance on when the contract(s) should be provided (besides the general rule that they should be made available prior to the departure of the worker).<sup>167</sup> This leaves the possibility open that workers will receive their contract(s) after they have already paid all fees and just prior to departure, as is common practice (see Chapter 6—Harms above). There is also no detail on when and how DoFE must provide a copy of the employment contract to the worker after certifying it (Section 25(2))—an obligation that is not being implemented.

### **Inadequate Attention to Vulnerable Groups**

The FEA 2007 and the 2008 Rules fail to give adequate consideration to the needs of particularly vulnerable categories of workers, such as women and workers in an irregular status. Individuals who either migrate through informal channels, or who ultimately find themselves in an irregular status, regardless of whether they are at fault, are particularly vulnerable to exploitation and abuse (see 4.3 Irregular/Illegal Migration). Though they are not excluded from protection under either the act or the rules, they are not provided with explicit and tailored protections or redress mechanisms. For example, there are no provisions that account for the evidentiary challenges associated with bringing a claim on behalf of a worker in an irregular status, or for assisting irregular migrants to obtain replacement documents if their position was terminated abroad, or to clearly hold agents and recruitment agencies accountable for sending migrant workers irregularly and for assisting workers to regularize their status if still abroad.

While facially non-discriminatory, the failure of the act and the rules to address the specific needs of female migrants, the unique harms they suffer, or the unique challenges they may face in seeking to access justice has a discriminatory impact. Special measures to account for women's lower literacy rates and levels of education, fewer financial resources, traditional discrimination against women, gender-specific health needs and concerns, concerns for children, pregnancy-related needs, and the stigmatization of women migrants are needed to ensure a system of labor migration that fully protects the rights of female migrant workers, and ensures accountability and redress when those rights are violated. Furthermore, bans and restrictions on female labor migration to specific countries has resulted in a higher percentage of young women travelling through informal channels, increasing their vulnerability to exploitation and abuse while practically excluding them from protection under the domestic labor migration legal regime<sup>168</sup> (see 4.2 Female Migrant Workers and 4.3 Irregular/Illegal Migration).

The HTTCA could fill some of the gaps in protection under the FEA 2007 and the 2008 Rules for female migrant workers and workers in an irregular situation. The HTTCA could be employed, for example, to hold individual agents and recruitment agencies accountable if female migrant workers find themselves tricked into prostitution or subject to sexual abuse abroad. It could also be employed for workers in an

irregular status where it could be argued that the workers were transported as a result of fraud, misinformation or coercion, and subsequently subjected to labor exploitation. The relationship between the HTTCA and the FEA 2007 is unclear, however—neither makes specific reference to the other, including when foreign employment cases should be referred to the police for a trafficking investigation, or when trafficking cases should be referred to DoFE.

### **Inadequate Guarantees of Transparency**

The law does not adequately promote full transparency within the labor migration framework, and specifically, in the regulation of recruitment agencies, agents, and employers. The FEA 2007 does take the positive step of requiring DoFE from time to time to publish the names of both licensed recruitment agencies, and agencies whose licenses have been revoked. While the Rules 2008 prohibit directors of formerly banned agencies from obtaining a license for a new agency (Rule 8(1)(i)), in practice, directors and members of banned agencies reportedly often reopen a new company under a different name. Furthermore, the directors and members of the recruitment agencies are not publicly listed. Nor is a database of complaints made or prosecutions against particular agencies or the employer institutions with whom they contract publicly available. Similarly, embassies are not required to collate or provide reports about problematic employer institutions in destination countries. This lack of transparency denies workers and their advocates the opportunity to engage in due diligence and to make informed decisions prior to departure.

## **7.6 The Role of International Law**

The Preamble to the Interim Constitution underscores Nepal's commitment to "fundamental rights, human rights, ... and concepts of the rule of law."<sup>169</sup> Article 33 of the Interim Constitution obligates Nepal "[t]o adopt a political system fully upholding the universally accepted concepts of basic human rights," and enumerates a series of specific rights reflective of those contained in different international human rights treaties and responsive to Nepal's social and political history.<sup>170</sup> Article 34(2) further identifies the protection and promotion of human rights as an objective of the state.<sup>171</sup>

International human rights law is incorporated into the domestic law of Nepal through the Nepal Treaty Act, 2047 (1990).<sup>172</sup> The act establishes that international treaty provisions are enforceable on par with Nepali laws, and mandates that where treaty provisions are inconsistent with Nepali law, the domestic law is nullified and treaty provisions trump (Section 9(1)).



Nepal has ratified most of the core UN international human rights treaties, as well as 11 of the International Labour Organization (ILO) conventions (See Annex 3 for list of treaty ratifications). It has done so with only limited reservations. It has also ratified the Vienna Convention on Consular Relations, which governs the conduct of its consulates in destination countries, with respect to protection of Nepali migrants.<sup>173</sup> Nepal is not, however, a party to several core international treaties that specifically address the human rights of migrant workers, namely the UN Convention on the Rights of All Migrant Workers and Members of their Families (1990), ILO Domestic Workers Convention 2011 (C. 189), ILO Migration for Employment Convention (Revised) 1949 (C. 97), and ILO Migrant Workers (Supplementary Provisions) Convention 1975 (C. 143). Nor is it a party to the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. Nonetheless, the treaties it has ratified directly govern several key rights and obligations applicable to Nepali nationals engaged in labor migration and provide a legal basis for challenging the role of the state in ensuring the protection, promotion and fulfillment of those rights, even where the rights violators are private actors (See Section 2.1, and Annex 3).

In addition, Nepal is a member of the South Asian Association for Regional Cooperation (SAARC) and has ratified the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. The SAARC Convention, however, is more narrow in scope than the HTTCA and focuses exclusively on trafficking in women and children for prostitution, without recognizing other forms of human trafficking for labor, including trafficking of men. The UN Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, to which Nepal is also a party,<sup>174</sup> provides a slightly broader legal framework for combating human trafficking in that it is not gender specific, but it remains focused on prostitution and not broader forms of labor trafficking.

In addition to the domestic courts that are required to give effect to international treaties,<sup>175</sup> the National Human Rights Commission (based in Kathmandu) has authority to “ensure the respect for, protection and promotion of human rights and their effective implementation.”<sup>176</sup> It has broad duties and investigative functions under both the Interim Constitution 2063, (2007) (Article 132) and the Human Rights Commission Act, 2053 (1997),<sup>177</sup> with respect to breaches of fundamental constitutional rights and rights under international human rights treaties to which Nepal is a party.<sup>178</sup>

## **Bilateral Agreements and MoUs with Destination Countries**

Under the FEA 2007, the government is authorized to make bilateral labor agreements with countries where Nepali citizens have gone or may go for employment. Bilateral agreements in Nepal are considered a “treaty” under Nepali law and therefore are binding domestic law under the Nepal Treaty Act 1990.<sup>179</sup>

Nepal has signed one bilateral agreement and two memorandums of understanding (MOUs) for temporary labor migration with governments in the Middle East: Bahrain, Qatar, and the United Arab Emirates.<sup>180</sup> Each of these agreements was negotiated by the governments of the respective countries with very little public engagement and involvement.<sup>181</sup> While the three documents differ in their detail, all are based on a commitment to cooperate regarding the sending and receiving of labor, and generally include the following:

1. The responsibilities of Nepal before departure;
2. Payment of a worker's travel and employment costs;
3. Contents and form of a contract; and
4. A method for resolving disputes between the worker and the employer, and between the recruitment agency in Nepal with the employer, or employer institution, in the destination country, and the applicable law.

A comparative table of the content of each agreement is set out in Table 5.

Only one of the agreements, that with the UAE, mentions protection of migrant workers, but even this is minimal. It states: "Nepalese expatriate workers shall enjoy protection in relation to the placement of service, accommodation, social and health service as well as other facilities prevailing according to the rule and regulation in UAE." (Article 4(2)). It also includes a "right" of Nepali migrant workers to remit their earnings and savings (Article 8). The agreements do not, for example, mention anything regarding reasonable accommodation, recruitment fees, debt bondage, ability to hold one's own personal documents, a right to information and training, or repatriation in case of injury or death.

In addition, the Ministry of Foreign Affairs in Nepal conceded that the agreements are difficult for Nepal to enforce, both because of Nepal's weaker bargaining power as a poorer nation and because Nepali workers will continue to travel to the country regardless of restrictions. An official noted:

Although we sign bilateral agreements with governments of destination countries, we may not have the necessary influencing power to enforce implementation of the agreements. It is also meaningless to say that we will not send our citizens to work in their countries as Nepali migrant workers reach there through various unofficial channels.<sup>182</sup>

**TABLE 5: Bilateral Agreement and MOUs between Nepal and Middle East countries regarding labor migration**

Agreement/ MoU	Pre-departure	Costs and Fees	Contracts	Dispute resolution
Qatar— Bilateral Agreement 2005	Government of Nepal responsible for medical tests, acquiring passports or travel permits, and providing adequate information on conditions of employment, cost and standard of living in Qatar.	Employer covers round-trip travel expenses. Employer exempted from paying for return trip if the worker leaves before end of contract, or is dismissed for breach of contract.	To contain employment conditions and rights and obligations of both parties (model contract appended). <sup>183</sup>  Must be in Arabic, Nepali and English. Four copies for worker, employer, Nepal government, and Qatar government.	Amicable settlement at the Qatari Ministry of Civil Service Affairs and Housing. If amicable settlement fails, to the courts.
UAE—MOU 2007	Unspecified.	Employer is “responsible for placement and selection” of worker, though does not allocate responsibility for costs.	The rights and obligations of both parties, which must be consistent with UAE labor law. Copies in Arabic, Nepali, and English.	Amicable settlement at the UAE Ministry of Labor. If that fails, referral to UAE courts.
Bahrain— MOU 2008	Recruitment agencies responsible for ensuring worker is medically fit and “trained properly.”	Not specified.	Name of employer, his/her establishment, term of the contract, type of work, agreed wage and any other details agreed. Language not specified.	Disputes in which a worker is involved to be settled according to the labor law for the private sector. Disputes between recruitment agencies to be settled amicably, followed by recourse to Bahrain’s courts.

Nevertheless, the requirement to have an employment agreement, the specification of the minimum content of the agreement, and the articulation of a method of resolving disputes give rise to a significant set of implied rights for migrant workers. Also key is the requirement that employment contracts in Qatar and Bahrain be given in Nepali. A former ambassador to Qatar noted that the bilateral agreement had been very helpful in negotiations with Qatari officials, and that she had used it to ensure migrant workers were issued ID cards by their employers and to push for an increase in the minimum salary.<sup>184</sup> The government of Nepal is currently considering labor agreements with Israel, Jordan, Lebanon, Malaysia and Saudi Arabia.<sup>185</sup>



## 8. Mechanisms for Enforcing Rights

The previous chapters in this report set out the obligations of government and private actors and the rights and protections granted to migrant workers under the FEA 2007 as well as other domestic laws and international law. These rights and obligations have little meaning to migrant workers unless there are accessible and effective mechanisms for enforcing them, and for providing redress when rights are violated. This section outlines the key Nepal-based mechanisms for enforcing rights and obligations associated with labor migration, consisting of:

1. *The Department of Foreign Employment*, which receives complaints of violations of the FEA 2007, conducts investigations, makes orders in respect to certain offenses under the act and imposes penalties, and registers more serious cases at the Foreign Employment Tribunal;
2. *The Foreign Employment Tribunal*, which adjudicates more serious criminal cases under the FEA 2007, for which the defendant could be imprisoned;
3. *The Court System*, which adjudicates criminal cases under the HTTCA and the Muluki Ain (Civil Code).
4. *Compensation Schemes in Cases of Death or Permanent Disability*, including the government-operated Foreign Employment Welfare Fund managed by the Foreign Employment Promotion Board, and private life insurance.
5. *Nepal's Embassies*, which offer dispute resolution assistance between workers and employers abroad, and may assist migrant workers to bring cases in overseas forums.

In addition to these mechanisms, Nepalis use several informal methods for resolving labor migration disputes.

This section reviews each of these potential pathways to justice against the criteria established in Section 2.2 on “Defining and Assessing Access to Justice,” identifying the relevant legal framework where applicable, the various actors involved, the procedures for filing a complaint, and perceptions of efficacy and accessibility. It draws on the experiences and perceptions of migrant workers and of the government officials responsible for implementing and overseeing the mechanisms, as well as recruitment agencies and insurers, and the lawyers and civil society organizations who assist migrants seeking redress.

## 8.1 Department of Foreign Employment Complaints Registration and Investigation Section

DoFE is the principle agency in Nepal charged with handling migrant worker complaints against institutions (recruitment agencies) and individuals (unregistered agents). A special investigative unit within DoFE, the Complaints Registration and Investigation Section, investigates all complaints received by the department. It also has the power to make orders and impose penalties in certain cases brought against recruitment agencies, and to refer other cases to the police or to the Foreign Employment Tribunal.

This section outlines the DoFE procedures under the FEA 2007 and the 2008 Rules. It also describes the operation of DoFE procedures in practice, drawing on interviews with officials at the department and other key informants including prosecutors and lawyers. To determine the perceived effectiveness of DoFE’s investigation and complaint resolution mechanism, the section also draws on statements from six migrant workers who filed complaints at DoFE, as well as a sample of 214 cases filed with DoFE in 2011 and 2012, provided to the authors by DoFE and compiled by the authors in a database (see Chapter 3—Research Methods).

### DoFE Investigative Jurisdiction and Powers

Although the offenses under the Foreign Employment Act 2007 are criminal offenses, the Act assigns jurisdiction to DoFE to investigate alleged offences.<sup>186</sup> Those investigations are carried out by an investigation officer within the Complaints Registration and Investigation Section. Investigation officers are government lawyers, usually with a number of years of experience and seconded from other ministries. They are given all police powers to investigate the alleged crimes under the act, including:<sup>187</sup>

Powers to arrest the person involved in the offence, search any place in relation to the offence, take custody of documents or other things related with the offence, record depositions and execute recognizance deeds’ (Section 61(2)).

Investigative officers are not police, however, and have not undergone police training regarding use of these powers.

Complaints to DoFE can be made “by any person or in any other manner that an offense has been or is going to be committed in contravention” of the Act or the 2008 Rules (Section 61). Complaints can therefore be submitted by the victim, a family member or any other person, and may be made on behalf of a single migrant worker, or a group of workers. The provision does not limit the ability to submit a complaint to workers who traveled in and maintained regular status.

For some of the key offenses listed in the act (such as carrying on a foreign employment business without a license, sending minors for foreign employment, and document falsification), a complaint can be submitted at any time. However, for other offenses, including those related to compensation, contract violations, and charging of excessive recruitment fees, the statute of limitations is one year from the date of the offense, or if the victim was working abroad, one year from the date of return to Nepal (Section 60).

A complaint consists of a first investigation report/application form together with supporting documents. The law does not specify which supporting documents are required to lodge the complaint. A labor migration lawyer interviewed for this study noted that the most important document is a copy of the receipt of payment made by the worker for foreign employment,<sup>188</sup> which must include the names of the worker and the person or company who received the payment, and be signed by a witness. He further noted that the application must indicate whether or not the complainant is presenting the complaint in person, whether the witness to the payment is present, and whether identity documents are included. It should also identify the person/institution who sent the worker abroad, and provide the address of the person against whom the complaint is registered.<sup>189</sup> He then noted:

Only upon confirmation of the above [evidence] and if we feel that we can arrest the accused then we register the [complaint]. If we cannot get the person arrested, we do not register it. If other documents like agreements with the employer, flight tickets are available then the case is strong.

In many cases workers do not have original documents, only photocopies provided by agents. Although FEA 2007 does not require original documents, at least one lawyer believed that they were required.<sup>190</sup>

DoFE figures from the last three Nepali years suggest that slightly more complaints are brought against individuals than against recruitment agencies.<sup>191</sup> Note that not all complaints against recruitment agencies have specific victims; some may have been filed by another section of DoFE or another ministry in respect to more administrative violations of the law.



## A Review of Sample Complaints filed at DoFE

As part of this study, the authors obtained a random sample of 214 cases registered at DoFE (see Methods section). Though not necessarily representative of all cases filed with DoFE, these cases indicate the types of cases that reach DoFE, including a profile of the accused parties and the victims, and the types of harms alleged. Within the sample:

- The vast majority of complaints in the sample (85 percent) were against individuals rather than recruitment agencies. In 20 percent of cases against individuals, the accused and at least one victim were from the same home district.<sup>192</sup>
- Most victims appear to file cases directly, rather than going through a civil society organization or lawyer. Indeed only 10 case files mentioned the involvement of a civil society organization.
- Around a third of complaints involved only one victim; all others involved at least two victims. The largest number of victims in a single case was 619. This case was filed against a recruitment agency alleging that it had taken recruitment fees promising to send the victims to the United Kingdom, but that it did not in fact send them.
- The most common complaint (89 percent of claims) was under section 43 of the act, accusing an individual agent of taking money from the prospective migrant worker, but then failing to send the individual abroad. These individuals never left Nepal; 71 percent of cases involved only pre-departure violations.
- As a result, the most common remedy sought by complainants was return of the recruitment fee (98 percent of cases), and additional compensation (90 percent). In 11 cases migrant workers sought return of their passport.
- Just 34 cases made claims in respect to treatment while abroad. These included work on terms different to what was in the employment contract, termination of the contract, or, in some cases, physical abuse.
- Forty percent of the cases were in respect to work in the Middle East, 5.5 percent to Asia (primarily Macau), and the remaining 54.5 percent to other destinations such as Canada, Europe or the United States.

## Investigation of Migrant Worker Complaints and Arrest of Accused

The first step in an investigation following receipt of a complaint is to get the accused to make a statement responding to the allegations with the Complaints Registration and Investigation Section. If the investigation officer believes that the available evidence is strong and suggests that the accused has committed the alleged offense, the officer can call on the accused to come at a certain day and time, and may detain the accused (for a maximum period of thirty days, not to exceed seven days at a time) or release the accused on bail (Section 61(3)).

The process of investigation will vary depending on whether the accused is the recruitment agency, or an individual agent. When the accused is the agency, the investigation officer sends a letter to the company outlining the alleged offense and requesting that a representative come to DoFE for an interview.<sup>193</sup> When a complaint is made against an individual, DoFE invariably orders the arrest of the individual. In practice, this means that the officer will write a letter to the local police in the district where the individual is believed to reside, and the migrant worker will be left to take the letter to the police and urge the arrest of the accused.<sup>194</sup> In some cases, as noted in Section 8.6 below on informal dispute resolution, the police may bring the accused to DoFE of their own accord if a complaint has been made against the person in their community.

The investigation officers explained that they do not have the human or financial resources to conduct a more in-depth investigation beyond reviewing the migrant worker's documents and interviewing the parties to the dispute. For example, even though they have the power to search the premises of recruitment agencies, call witnesses or confiscate documents, this is rarely if ever done. As of March 2014, DoFE had only one investigation officer to handle all complaints, and the department was seeking to recruit two more.

The relatively superficial nature of the investigations may also be a result of training—the chairperson of the Foreign Employment Tribunal noted that the investigations she received were often incomplete because, in her opinion, the investigation officers were not trained as police. She believed that the police should be given a greater role in investigations of foreign employment cases.<sup>195</sup>

As a consequence of the limited investigations, additional parties are never added to the complaint, although they are frequently involved. A lawyer at the NGO People Forum noted that in almost all cases against a recruitment agency, an individual agent would also have been involved, and in many cases against an agent, a recruitment agency would have also been involved.<sup>196</sup> However, these other parties would simply deny their involvement; proving otherwise takes considerable time and resources that DoFE investigation officers do not have.

## DoFE Jurisdiction and Powers to Make Determinations and Orders

As well as having jurisdiction over the investigation of all foreign employment cases, DoFE also has authority to adjudicate certain categories of cases in which the accused is a recruitment agency.<sup>197</sup> Its powers include: to make a determination and to make orders for the payment of fines, suspension or revocation of a recruitment agency license, and in certain cases, to make a determination and order for compensation to be paid to a migrant worker by the recruitment agency.

As Table 6 (below) illustrates, most cases resolvable at the department level are administrative in nature in that they violate a provision of FEA 2007 but do not cause direct harm to an individual. However, DoFE also has jurisdiction over several key offenses against migrant workers, the most important of which are:

- ***Excessive Recruitment Fees***—Charging migrant workers above the government prescribed amount, whereby DoFE can order that any excess fees be repaid to the worker (Section 53);
- ***Fraud***—Sending a worker to work in a position or on terms that were different from those promised in the contract. In these cases, DoFE can order that the recruitment agency compensate the worker for any difference between what was promised and what was received (Section 55). A lawyer interviewed for this study expressed the view that Section 55 requires intent to deceive or exploit on the part of the recruitment agency.<sup>198</sup>
- ***Failure to Pay Compensation as Ordered by DoFE***—if a recruitment agency fails to follow a DoFE order, DoFE can take funds from the agency's cash deposit or assets to compensate the worker, and impose a fine and/or license revocation (Section 51).

In addition to these offenses, DoFE also has authority to hold recruitment agencies partially liable in the event that the employer in the destination country does not abide by the terms of the employment contract signed in Nepal (Section 36). This provision is significant and relatively unusual in origin countries, and provides what may be the worker's only available redress for harms suffered abroad, given the challenges associated with pursuing redress within the domestic legal system of the destination country. The provision may apply even if there is no written contract between the worker and the recruitment agency, and even if the worker cannot demonstrate intention to defraud on the part of the recruitment agency. However, the amount of compensation that can be awarded is limited to the sum of costs incurred in going for foreign employment (namely, the recruitment fees), and not the full amount of the worker's actual loss. This is in contrast to intent-based cases under Section 55, for which the fine is NPR 100,000 in addition to compensation to the worker for any shortfall in remuneration or varied facilities or other conditions, excluding recruitment fees.

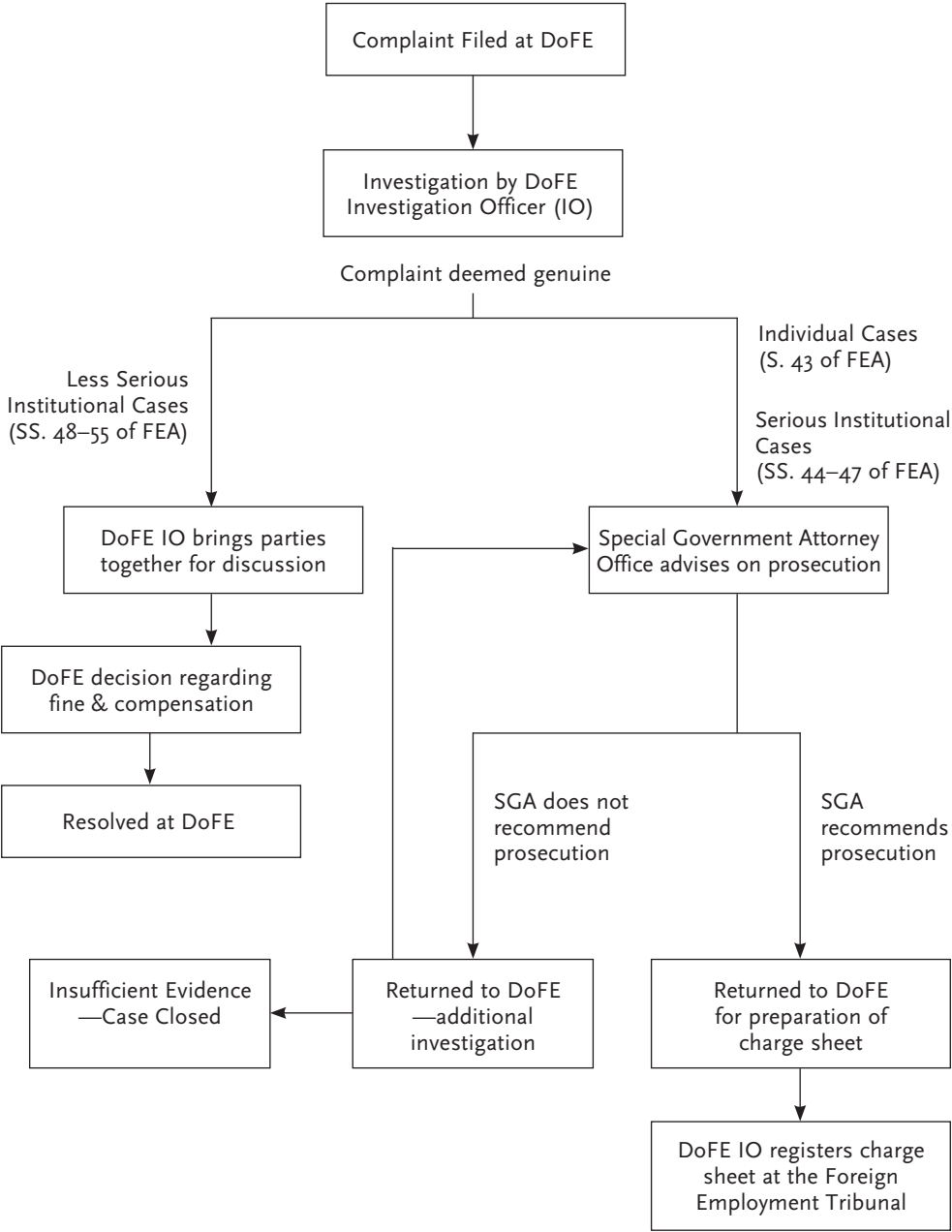
**TABLE 6: Offenses for which DoFE Is Authorized to Make Determinations and Orders**

Sec.	Offense	Fine and Other Penalty
48	If any licensee opens a branch office without obtaining permission from the department.	NPR 200,000 fine for each unauthorized branch office; and closure of unauthorized branch offices.
49	If any licensee fails to publish an advertisement [for available positions] or publishes an advertisement without the permission of the department. Or if the licensee includes details in the advertisement that are different to what the department approved [during the pre-approval process].	NPR 50,000 fine for failure to advertise; or cancellation of unauthorized advertisements; or correction and reprinting of incorrect advertisements.
50	If any licensee fails to publish a selection list of workers, or publishes it but fails to inform the department.	NPR 50,000 fine; and order to republish the selection list.
51	If any licensee sends any worker to any country that has not been opened by the Government of Nepal for foreign employment or obtains a visa from a country that has been opened but sends the worker to a country that has not been opened.	NPR 300,000–500,000 fine; and 3–5 years imprisonment. Punishment halved if the person has not yet departed.
52	If any licensee sends a worker on an individual basis [that is, hiding the involvement of the recruitment agency].	NPR 100,000–300,000 fine; and/or revocation of the license.
53	If any licensee collects a visa fee where the visa is free, or collects fees or costs in excess of the prescribed amount.	NPR 100,000 fine; and return of the excess fees to the worker.
54	Failure by a licensee to observe the FEA 2007 or any rules, orders or directions framed or issued under the act.	A warning in the first instance. NPR 50,000 fine in second instance of same offense. NPR 100,000 fine and revocation of license in third instance of same offense.
55	If any licensee, after making a contract with any worker for work in a company, engages the worker in work for remuneration in facilities lower than, or in another company for work of a different nature than specified in the contract, or does not engage the worker in work for which the worker has been sent but engages the worker in different work, or in work for remuneration and facilities less than the remuneration and facilities offered previously.	NPR 100,000 fine; and compensation of the worker for the shortfall in such remuneration and facilities.

For any offense for which DoFE is not specifically authorized to make findings and orders, including all offenses committed by individual agents, DoFE must register the case at the Foreign Employment Tribunal, after seeking legal advice from the Special Government Attorney (see section below on the Foreign Employment Tribunal).

Table 7 displays the number of complaints filed at DoFE and their processing since 2009/10. Of the 2,305 cases filed in fiscal year 2012/2013, DoFE resolved 552 cases, and registered 178 cases at the tribunal. In the remaining cases, the complaints were “withdrawn,” indicating that the victim had written a letter to DoFE withdrawing his or her application. The “withdrawn” category was apparently removed in 2012/2013 in recognition that a victim of an alleged crime cannot withdraw a complaint. DoFE indicated that cases previously withdrawn would eventually still be prosecuted, but given the shortage of staff at DoFE, they have not been prioritized leading to a significant backlog. Further research is needed to determine the extent to which migrant workers have been threatened or coerced to “withdraw” their complaints, or whether they have in fact received the compensation they agreed to in the settlement.

**FIGURE 6: Summary of DoFE Complaints Investigation and Handling Procedures**



**TABLE 7: Details of Complaints Registered at DoFE and Tribunal**

SN	Year	Particulars	2009/10		2010/11		2011/12		2012/13	
			Individual Complaints (Against Individual Agents)	Institutional Complaints (Against Recruitment Agencies)	Total	Individual Complaints	Institutional Complaints	Total	Individual Complaints	Institutional Complaints
1	Number of complaints registered at DoFE		323	332	655	721	483	1,204	1,370	802
									1245	1060
										2305
2	Number of cases resolved at DoFE		105	125	230	355	302	657	202	350
										552
3	Number of cases registered at Tribunal		65	12	77	89	8	97	164	14
										178
4	Cases in which victims withdrew complaints "withdrawn"		17	65	82	180	267	447		
										N/A

Source: Department of Foreign Employment 2013

## **Making Decisions and Orders for Compensation, Appeals**

The FEA 2007 does not establish clear guidelines for evaluating claims or resolving a case at DoFE. While a subsequent directive has been issued describing the investigation process, two investigation officers interviewed for the study described a very informal process of reviewing the evidence (documents and statements) and making a decision about whether the complaint is genuine and an offense has been committed.

For those cases deemed genuine, the officer will calculate how much he thinks the recruitment agency should pay to the worker, based on the punishment for the offense set out in the FEA 2007. The officer then will telephone the agency to discuss the case. One officer noted, “[i]f [the recruitment agency] agrees to pay back the money, then the case is solved immediately.” This, he believed, was most cases.<sup>199</sup> Orders for compensation must be reviewed by the director general of DoFE.

If either party is unhappy with a DoFE determination or orders, that party can appeal to the Government of Nepal within 35 days of the decision but the law does not detail the form of an appeal. One lawyer noted that an appeal had to be made through a written letter to the Minister of Labor and Employment.

## **Enforcement of DoFE Decisions**

If the agency does not pay the compensation awarded to the worker, DoFE may “get the compensation returned to the worker” from the cash deposit that the agency provides as a condition of its license (Section 51(1)).<sup>200</sup> If the cash deposit is insufficient to cover the compensation owed, DoFE must give the agency 60 days to pay the shortfall, after which the amount can be recovered from the agency’s assets (Section 51(2)).

The law does not specify how compensation is practically recovered from the deposit or the agency’s assets or which government agencies ought to instigate and ensure the recovery. According to several lawyers interviewed, obtaining compensation from the deposit is a straightforward process that generally takes no more than a few weeks. An investigation officer also explained that if a recruitment agency does not respond to the claim or refuses to pay the amount ordered by the department, DoFE is authorized to temporarily suspend or cancel the agency’s license and/or fine the agency 100,000 NPR.<sup>201</sup>

According to a DoFE legal officer and a private lawyer, in most cases the recruitment agency will repay the amount in order to avoid these additional sanctions.<sup>202</sup> It is unknown whether an agency license had been suspended or revoked for refusal to pay compensation. Interviewees, both lawyers and DoFE staff, could not recall any such case, and DoFE does not keep systematic records of the reasons for suspending or revoking licenses which could provide this information.



## Registration of Cases at the Foreign Employment Tribunal

Apart from the handful of matters that the department is specifically authorized under the act to resolve (see DoFE Jurisdiction for Making Decisions and Orders above), all other matters under the FEA 2007 are decided by the Foreign Employment Tribunal (Section 64). Cases must be filed at the tribunal by a DoFE investigation officer in his or her name after the investigation is complete—a worker cannot register a case directly with the tribunal (Section 61(4)).

All cases before the tribunal are “state cases” (Section 63). Therefore, before deciding to file a case with the tribunal, the investigation officer must “get advice of the government attorney” (Section 61(4)). Until the end of 2013, this advice was provided by the Office of the District Attorney (DA’s Office), which prosecutes all criminal cases. On December 9, 2013, the Nepali cabinet created a new Special Government Attorney’s Office (SGA) to prosecute certain categories of cases, including foreign employment cases.<sup>203</sup> The SGA Office’s “Administrative Labor and Foreign Employment Branch” is intended to have greater specialized knowledge that will allow it to improve access to justice for both victim and perpetrator.<sup>204</sup> At the time of writing, the SGA Office was in its infancy but had already taken over advising on and prosecuting foreign employment cases. Information about SGA practices was not available at the time of writing but practices are unlikely to be significantly different from those of the DA’s office, outlined below.

DoFE provides the prosecutor with the case files and a *decision chit*, namely a report containing all of the facts identified during the investigation, as well as the investigation officer’s view of which witnesses are most reliable and a recommendation for what should happen in the case.<sup>205</sup> The prosecutor’s review includes advising on proposed charges and an opinion as to whether the evidence is sufficient to register the case at the tribunal. The DA noted, “a case can only be registered [with the tribunal] if the evidence is sufficient to support the claim of the victim.”<sup>206</sup>

Following its evidentiary review, the prosecutor sends a letter of advice to the relevant DoFE investigation officer. If the prosecutor considers the evidence insufficient, DoFE has the option to either close the case or seek further evidence. If the prosecutor recommends prosecution, the DoFE investigation officer is then responsible for preparing the charge sheet and filing it at the tribunal (see next section). According to DoFE, however, very few cases have been rejected by the DA’s Office. Finally, if the prosecutor has identified grounds for other criminal charges not covered by the FEA 2007, the case could be referred to the police for investigation and tried in a regular court (although study participants could not identify a specific case in which this occurred).

It is unclear what value the prosecutorial review—a process in which the workers themselves do not participate—has played to date, given that most cases appear to be

automatically approved for filing at the tribunal, and that numerous reportedly fraudulent cases appear to be making it through to the tribunal. However, moving the review to the SGA, which is intended to have more specialized expertise, may create a more streamlined and effective process of review that warrants the additional procedural hurdle. This will particularly be the case if the new review process at the SGA is clearly documented and more accessible to the worker and his or her representatives.

## **Negotiation of Cases Pending at DoFE**

Officially, negotiation between the victim and the accused is not countenanced in cases before the department—both lawyers and DoFE officials stated that most FEA 2007 cases are criminal offenses, and the punishment is clearly mandated by the act.<sup>207</sup> Individual parties are not granted authority to independently negotiate a settlement, and victims are not technically permitted to withdraw complaints that allege violations of the act. However, migrant workers and civil society representatives suggested that negotiations at DoFE with both recruitment agencies and brokers are in fact common.

The director of the legal department at DoFE conceded that negotiations have occurred, and he gave several explanations for this. In some cases in the past, he acknowledged, corruption had enabled the individual agent or recruitment agency to make arrangements with a DoFE investigation officer to convince the worker to accept a lower amount of compensation than was due. A negotiation would ensue about how much would be paid.

In other cases, the legal department director noted, the appropriate amount of compensation was not clear. This occurred often in cases under Section 55 where a migrant worker accused the recruitment agency of sending him or her to a position or company that was different to what was written into the contract. The remedy in these cases, as noted above, is that the recruitment agency must pay the difference between the terms and conditions of work promised and received. Calculating differences in salary was simple if the migrant worker had the original contract and pay slips. However, calculating the value of the loss was much more complicated if, for example, the job was different to what was promised but the salary was the same, or the hours were longer or leave was denied. Indeed the department seemed skeptical that any harm had occurred if the worker was sent to a completely different job (for example where a worker was promised a job in a hotel but was sent to herd goats), but the salary was the same. In his view it was therefore inevitable that the victim and alleged perpetrator would negotiate an amount of compensation in these cases.

Third, the legal director stated that cases between a migrant worker and an individual agent (under Section 43) are frequently negotiated, even though those negotiations were not sanctioned by DoFE and, in fact, DoFE is not authorized to adjudicate

any cases against individual agents and must refer them to the tribunal. All six of the migrant workers in this study who had filed a complaint at DoFE filed the case against the individual agent and described the negotiation that followed.

Though negotiation may result in migrant workers accepting an amount less than what they consider they are owed, a number of significant practical considerations incentivize workers to accept a negotiated settlement. Migrant workers often want their money quickly so they can repay high-interest loans. They also often cannot afford to pay the travel and living expenses required to get to and remain in Kathmandu (and the time away from work and family) while they wait for the long process of DoFE investigation, prosecutorial review, and then a Foreign Employment Tribunal decision to receive compensation.

Further, in the case of individual agents, many migrants have to locate the agent at their own time and expense, and have him or her transported to Kathmandu with support from the Nepal police to be interviewed by DoFE. There is no guarantee the agent will attend further hearings (many brokers abscond) and so migrant workers feel some pressure to get an outcome at what may be their only opportunity.

Many of the stakeholders interviewed for this study viewed negotiation or mediation at DoFE with ambivalence. For example, a recruitment agency director described how it was often hard to determine from Nepal the real reason a person left their employment, but that the government would pressure them to pay, because it has “a negative attitude to manpower agencies.”<sup>208</sup> Another recruitment agency described how DoFE would bring the parties together and then an agreement would be signed, but noted: “There are challenges in mediation, sometimes there is risk involved. The workers who make complaints are not always of the same nature, some come in groups with a clear intention of using force.”<sup>209</sup> Some civil society organizations viewed mediation more positively. For example, one non-government organization representative said, “mediation is a very good tool ... we need to make sure that we do mediation through DoFE as the cases in those instances come under the government’s scrutiny.”<sup>210</sup> Others believed it to undermine the purpose of DoFE and accountability under the act.

### **Renu's Case on Behalf of Her Brothers**

Renu's brothers were experienced cooks and wished to work overseas. They used an agent who was a relative, even though they were aware she [the agent] was not registered, to travel to Kuwait to assist a chef in a five-star hotel. When they arrived, however, one brother was sent out into the desert to herd camels, and the other was made to herd sheep and cut grass. They contacted their sister, Renu, and asked her to report the agent to the police on their behalf.

Renu was worried about reporting the case immediately, believing it could put her brothers at risk, so she instead worked to bring them home early. They arrived after three and six months respectively. The brother who had herded the camels had developed hearing problems from sand blowing into his ears and required medical treatment. After their return, Renu took her brothers to the police to make a complaint, and the police instructed them to find the agent. They did so with much difficulty, tracking her from their home village to Kathmandu. The police then arrested the agent and took her to DoFE, assisting the family to file the case.

However, after the documents had been submitted and compensation was being negotiated, the agent filed a complaint that she had been wrongfully arrested, and then she disappeared. The case had not been resolved at the time of writing.

Even if the worker is willing to negotiate, an outcome is not certain. Only two of the six migrant workers in this study who sought to negotiate with their agent through DoFE successfully obtained an agreement. Further, in such cases, DoFE is not responsible for ensuring the payment is made as it is outside of the formal process. Indeed, in neither of the two settled cases was the agreed amount actually paid by the agent (see the story of Renu above and Manish below).

## Manish's Case

Manish, from Kathmandu, is a young carpenter with an elementary school education. He had previously worked in a furniture store in Malaysia, and after returning, applied to work as a carpenter in Qatar. Like many other migrant workers, he relied on a relative as an agent, who told him that he would be earning a salary of 900 Riyal and 200 Riyal in other benefits per month (although she asked him to sign a contract promising 1,000 Riyal). When he arrived, however, he was asked to sign a new contract of 700 Riyal per month. All of the new workers initially refused, but the agency locked them in their hotel room without food or water, and so they agreed to sign.

Once the contract was signed, Manish found that he had again been deceived, and that he would be working as a laborer rather than as a carpenter, and that he would be moved from site to site as a contract worker. He was very unhappy, and asked to go home on several occasions, but his *kafeel* refused. Eventually the sponsor sent him back to Nepal after he said that his mother and wife were ill.

As soon as he arrived back in Kathmandu, Manish went to DoFE to submit a complaint. He returned five times, including to bring the agent to give her statement. However Manish and the agent could not come to an amicable agreement about what she should pay him as compensation. His mother then hired a lawyer to handle the case, and, when the agent refused to attend the department again, the police arrested her. Eventually, a sum of compensation was agreed between the parties and the agent signed settlement papers. However, within a week she had fled Kathmandu and Manish and his family could not locate her.

## Awareness and Accessibility of DoFE Investigation and Claims Resolution Mechanism

Since its creation, DoFE has received an increasing number of cases each year from migrant workers and their families, suggesting greater awareness and utilization of the mechanism over time. In 2012/2013, the department received a total of 2,305 complaints. This compares with 2,172 in the previous year, and only 1,204 in the year before that. Of the 2,305 complaints, 1,245 were made against individuals and 1,060 were made against a recruitment agency. Yet given that more than 400,000 migrant workers leave Nepal each year and a large proportion appear to experience problems, this remains a very small number of cases.

Whether all of these cases relate to foreign employment is also unclear. Investigation officers suggested in one recent media interview that up to 50 percent of fraud claims (under Sections 43 and 44) filed at the department are not foreign-employment-related at all, but instead are attempts by local moneylenders to recover debts. The words “foreign employment” may be written at the top of the money-lending agreement to allow the complaint to be filed at DoFE, which has a relatively fast processing time compared to the local courts.<sup>211</sup> Moneylenders also perceive DoFE processes to be more flexible regarding evidence than the courts.<sup>212</sup>

A factor that weighs heavily against accessibility of the DoFE mechanism is centralization: at present DoFE has an office only in Kathmandu with no representation in any other part of the country. This automatically limits awareness of its functions outside the capital, and access for those who do not have the time and resources to travel to Kathmandu to file a case and potentially return for the case to be negotiated and resolved, or to remain in Kathmandu for the entire duration of the prosecution.

Another issue is the department’s treatment of claims from workers traveling outside the formally regulated system. Department officials were vague regarding whether the department would take claims from migrant workers who had travelled irregularly. One DoFE investigation officer said that the department does not handle cases of irregular migrant workers.<sup>212</sup> Another noted if the case appeared to be one of trafficking, or where the migrant worker was taken through India (considered by many to automatically amount to trafficking or human transportation) the case would be accepted, but would usually be referred to the police.<sup>213</sup> More recently, lawyers and DoFE officials said cases of irregular workers would in principle be taken, but they rarely had sufficient evidence to support their case.

Nothing in the act appears to prohibit the filing of a claim by an irregular migrant worker—indeed the act says that a complaint by “any person” regarding a potential violation of the act will be accepted (Section 61). In many cases, the migrant worker may be irregular because of wrongdoing by the recruitment agency, such as not being licensed or preparing false documents. An irregular worker may nevertheless face substantial practical barriers if he or she did not receive a contract or receipt from a licensed recruitment agency.

In terms of awareness and accessibility for particular types of claims, it is notable that only 24 of the 214 DoFE cases reviewed in this study related to problems that occurred in the destination country—17 regarding different terms and conditions of work to the contract, and 7 regarding other violations such as non-payment of wages and physical abuse. Anecdotal evidence of the high prevalence of problems abroad as compared to the number of cases filed indicates the existence of particularly significant barriers with respect to awareness of and access to DoFE procedures (as well as other

disincentives to filing complaints) for contract-related claims concerning harms that occurred while the worker was abroad.

## **Fairness of Procedures**

DoFE procedures are not clearly delineated in the act or rules. While DoFE has issued a directive on internal operations that provides general guidance on case-handling, it does not provide specificity of timing and steps, such that it is difficult to assess the fairness of procedures in place.<sup>215</sup> Interviews with migrant workers and experts suggest that the procedures are kept informal and highly flexible to enable the officers to handle many cases at once and to keep proceedings short, affordable and accessible. While this clearly benefits migrant workers in some cases, it also means that they are not easily able to challenge unfair procedures or outcomes.

Shortcomings in the procedures appear to be threefold. First, the number of DoFE investigation officers is far too few for the number of cases they receive. It allows only time for a handful of phone calls and meetings before a decision is made. The officers' investigation powers appear to be rarely used, for example visiting the office of the recruitment agency, seizing assets or subpoenaing documents or witnesses. Investigations are therefore superficial at best. Written decisions are not provided and not made public, and the files reviewed by the research team were often incomplete in respect to dates and details of outcomes.

A second and related problem is that recruitment agencies appear to be rarely involved in the proceedings or held accountable for the actions of agents. A DoFE officer stated that in a case where an agent named a recruitment agency as involved in the case, the recruitment agency denied any knowledge of the agent and the recruitment agency's word was taken. No further effort was made to examine the veracity of the agent's claim, for example by investigating the recruitment agency's records, or calling other witnesses.

Recruitment agencies' ability to avoid liability, and a lack of meaningful and transparent investigation into a recruitment agency's role, serves as a direct barrier to a migrant worker's ability to access justice. Individual agents are often more difficult to locate, and can abscond more easily than the recruitment agency, and themselves may not have the money to pay the compensation to which the worker is entitled. The recruitment agencies, on the other hand, have paid deposits from which compensation can theoretically be taken. Furthermore, the failure to pursue recruitment agencies working through unregistered agents greatly diminishes transparency and accountability within the recruitment industry, and removes any disincentives to agencies' continuing reliance on unregistered individual agents.

A third challenge is the incidence of negotiation and settlement between the parties that appears to result in cases not being prosecuted. Negotiated outcomes do

provide migrant workers with more immediate relief and can have practical benefits (such as time-saving, and reducing the number of trips to Kathmandu to attend tribunal proceedings), but they are also *ad hoc* and defeat the punishment purpose of the Act—foreign employment cases are criminal cases, and victims and perpetrators are not permitted to come to a deal. Whether unfair pressure is brought to bear on the migrant worker, or the outcomes of these negotiations are fair, is unclear. Due to the power imbalance between migrant workers and recruitment agencies, and the high-interest debts incurred by many migrant workers in the process of seeking foreign employment, migrant workers are likely to feel pressured to accept less than what they are due.

## Outcomes of DoFE Processes

According to DoFE data, around a quarter of complaints filed against recruitment agencies are resolved at the department level (350 of 1060 institutional complaints filed in 2012/2013 for example). In the sample of 214 cases reviewed in this study, 189 had progressed to a full investigation and 10 had been resolved by DoFE (all other cases were with the DA for review or set for transfer to the tribunal). The 10 complaints, all made against recruitment companies, included:

- Four cases of recruitment agencies submitting false documents to DoFE, including three cases of false work permits and one of a false medical report. It is unclear if there were individual victims in these cases or if the false documents were spotted by DoFE officers and referred for investigation. In all four cases, the complaint was made under section 54 of the Act, which alleges only a failure to follow a DoFE rule or order, and not under the specific provisions for false documents. In those cases, the recorded outcome was simply that a warning was issued.
- Three cases of fees being paid but the individual not being sent to the UAE as promised (in all cases excess fees were also charged). Two of these cases were prosecuted only under Section 54. The recorded outcome was a warning, although the workers had also requested compensation. In the third case, the file notation indicated the migrant worker sought punishment under Section 51 (which is unusual because Section 51 pertains to sending a worker to a country not opened by the government). The outcome was listed only as the accused was found guilty under Section 51 and punished accordingly.
- Two cases of workers being sent to Kuwait and Qatar respectively and finding the work was not as promised, and in one of those the agency did not reimburse the worker for expenses. The first case was brought only under section 54 but the outcome was not recorded. The second case was brought under section 55, which



alleges the recruitment agency intentionally misled the worker. The recruitment agency was fined NPR 100,000 (approximately US\$ 1,000) but an award of compensation for the worker was not recorded.

- One case of a recruitment agency recruiting for work in Oman without obtaining DoFE pre-approval (there were no specific victims named in this file). The recruitment agency was fined NPR 50,000 (approximately US\$ 500) in accordance with Section 40.

It is difficult to determine from these few cases whether the DoFE process is leading to fair outcomes, given that so few cases are actually resolved, and the notations in the case files appear incomplete or possibly in some cases incorrect. A more extensive review specifically of cases resolved at the DoFE level would be highly recommended. The available information does suggest a number of challenges or shortcomings, however. First is incorrectly categorizing the case and/or relying heavily on section 54 which has the weakest of penalties under the Act—namely simply a warning for a first offense. In addition, although in two cases recruitment agencies were fined for the violation, it was not at all clear that they were ordered to compensate migrant workers for their losses. This would suggest that the outcomes are not necessarily benefitting migrant workers as intended.

## 8.2 Foreign Employment Tribunal

The Foreign Employment Tribunal (the tribunal) was established in 2010, as one of a number of specialized judicial bodies in Nepal that adjudicate specific types of cases.<sup>216</sup>

The tribunal is comprised of three members and is chaired by a judge of the appellate court.<sup>217</sup> It is governed by the FEA 2007, which establishes its jurisdiction, and the Foreign Employment Tribunal Rules 2012, which provide further guidance on its procedures.

The tribunal is also governed by general judicial legislation, namely the Summary Procedures Act 2028 (1972). The Summary Procedures Act 1972 is intended, according to the preamble, “to provide for prompt disposal of small cases by following summary procedures.” The tribunal is therefore intended to be a fast and relatively informal forum.

### **Jurisdiction and Powers of the Tribunal**

The jurisdiction of the tribunal is defined by the FEA Section 64(1) as: “For originally trying and settling cases other than those punishable by the department.” This includes all cases that fall within the following offenses under the FEA:

- A person operating a foreign employment business without a proper license;
- A person or recruitment agency using deceptive techniques for recruitment;
- Sending a person for foreign employment without DoFE permission;
- Engaging in fraud;
- Sending a minor for foreign employment;
- Sending a worker to an unauthorized country; and
- Concealing or tampering with relevant documents.

These types of offenses are not subject to the one-year limitation period for filing the complaint (Section 60), and all can potentially result in fines or a prison term for the individual agent or an officer of the company (Section 57).<sup>218</sup> Table 8 below sets forth: the offenses to be tried by the Foreign Employment Tribunal; fines and possible terms of imprisonment; and compensation available to the worker. Note that only one offense applies to individual agents (highlighted), all others pertain to recruitment agencies.

**TABLE 8: Criminal Offenses to Be Prosecuted at the Foreign Employment Tribunal**

Sec.	Offense	Fine, Term of Imprisonment and Other Penalty	Compensation to Migrant Worker
43	<b>A person</b> operates a foreign employment business without a license OR “collects any amount with intent to engage a person in foreign employment or sends a person abroad by giving false assurance or lures a person to be engaged in foreign employment”	300,000—500,000 Rupees 3–7 years imprisonment.	Any amount taken from the worker, and an additional 50% of that amount. Expenses occurred in traveling or returning to be realized.
44	If any licensee sends any worker abroad without obtaining permission from the Department or collects any amount by giving false assurance or showing enticement that the licensee would engage any person in foreign employment but does not send that person abroad.	300,000—500,000 Rupees 3–7 years imprisonment Revocation of agency license.	Any amount taken from the worker, and an additional 50% of that amount.
45	If any licensee sends any minor for foreign employment.	300,000—500,000 Rupees 3–7 years imprisonment.	None

Sec.	Offense	Fine, Term of Imprisonment and Other Penalty	Compensation to Migrant Worker
46	If any licensee sends any worker to any country which has not been opened by the Government of Nepal for foreign employment or obtains a visa from a country which has been opened but sends the worker to a country which has not been opened.	300,000–500,000 Rupees 3–5 years imprisonment Punishment halved if the person has not yet departed.	None
47	If any licensee knowingly conceals any document or report required to be maintained under this Act or the Rules framed under this Act or alters any matter therein or makes any false contents or causes anyone to prepare false details.	100,000–300,000 Rupees. 6 months–1 year imprisonment. For a second offense penalty is doubled and agency license revoked.	None

## Filing Cases at the Foreign Employment Tribunal

To file a case at the tribunal, DoFE—following review by a government attorney—submits a charge sheet to the registrar.<sup>219</sup> The registrar, responsible for all administrative functions of the tribunal, receives the case files, and checks charge sheets and related documents for completeness.<sup>220</sup> At the time of writing, all files at the tribunal were paper files and there was no computerized filing or case management system in operation.

If the charge sheet is complete, the matter is registered the same day. The tribunal will communicate the case registration to the SGA Office and a prosecutor will be appointed to prosecute the case through the trial.<sup>221</sup> If the defendant is present, his or her statement can be taken the same day, and a bail hearing conducted.<sup>222</sup> If the charge sheet is incomplete, the registrar can reject it and inform the DoFE investigating officer, giving reasons.<sup>223</sup>

## Detention, Bail and Hearings

Once the case is registered, the registrar will set the date for a hearing on evidence. The parties include the government attorney who prosecutes the case on behalf of the state, and the defendant.<sup>224</sup> If the accused is a licensed recruitment agency, the employee or office-bearer who is accused of committing the offense will be the defendant, or the chief of the company if the relevant employee cannot be identified.<sup>225</sup> The victim is not a party to the case, but may serve as a witness during the hearing on evidence and the final hearing. The hearings are relatively brief, usually no more than a day. The victim must attend on his or her own, as well as ensuring that any other witnesses presenting evidence in the victim's case attend to give their statements.<sup>226</sup>

## Decisions, Execution, and Enforcement

In most cases, the judge or judges sitting on the tribunal will give their verdict on the same day as the hearing. The tribunal will eventually give the government attorney a copy of the full decision for the case file, but decisions are not published or otherwise made publicly available.<sup>227</sup> Any party dissatisfied with a decision of the tribunal can appeal to the supreme court within 35 days of the verdict.<sup>228</sup>

If the victim is awarded compensation by the tribunal, defendants from recruitment agencies may be ordered to pay a victim from the agency's deposit. In cases where the deposit is insufficient, or the defendant is an individual agent, compensation must be taken from the property of the perpetrator.<sup>229</sup> The tribunal does not have the power to enforce its decisions but rather the victim must make a separate application to the local district court to establish the available assets of the perpetrator and get an order for payment.<sup>230</sup>

This process is complicated, onerous, and time-consuming for victims and most are unaware of the requirements unless they have legal representation. A successful claim for compensation also requires that the defendant have assets, which many individual agents, for example, do not. According to one legal officer:

Implementation of decisions is the most difficult part when it comes to cases filed at the tribunal. The victim has to file another application to the execution section, requesting to be granted compensation from the property of the perpetrator. But if the perpetrator is unable to show property or does not have any property, then the victim will not be compensated. Therefore, even though the tribunal decides a case in the worker's favor ordering that s/he be granted compensation, there is no guarantee that the victim will be compensated.<sup>231</sup>

Note that an application to the district court to enforce a court order is standard practice for all cases in Nepal, not just foreign employment cases. Nevertheless, the deputy attorney general noted that as a consequence of these procedures, "decision implementation has not been effective." In his opinion, few victims obtain compensation from the defendant after a win at the tribunal.<sup>232</sup>

## Awareness and Accessibility of the Tribunal

Tribunal data suggests that the number of cases registered is relatively small. In the 12 months of 2012/13, just 178 cases were registered at the tribunal. Of those, 164 were brought against individuals and 14 were brought against recruitment companies. In the prior three years 2009/10, 2010/11 and 2011/12 the tribunal registered 77, 97, and 196 cases respectively. Given that all cases against individuals and some against recruitment agencies must be filed at the tribunal, and that DoFE receives several hundred cases per year, these figures seem remarkably low.

A review of the 214 case files examined as a part of this study also revealed a small number of cases progressing to the tribunal. Of the 187 files that had sufficient information, 158 claims had been accepted by DoFE and investigated (the remaining were rejected for various reasons, such as lack of evidence). Of these, 83.5 percent (132 of 158) were forwarded to the prosecutor for advice, and 108 were then recommended for prosecution. However, only 10 were then registered at the tribunal. This means that only 5.4 percent of cases filed at DoFE were registered for a tribunal hearing, and another 98 worthy cases were left “pending” at DoFE.

When asked the reasons for registering so few cases, the legal director of DoFE blamed resource constraints. He also explained that many migrant workers sought to “withdraw” the case by writing a letter to DoFE to explain that they had already been paid compensation or some other reason. Although a victim cannot technically withdraw a case, he explained that this made the case less of a priority and so the prosecution of the offender would languish. As noted in the earlier section on DoFE, it is unclear whether victims are in fact paid sufficient compensation or whether they are threatened to withdraw the case. It is clear though that failing to prosecute offenders for crimes under the act is a denial of justice for the victim of the crime. The process of investigation and processing of complaints first by DoFE before referral to the tribunal creates extra hurdles for workers seeking to have their complaints prosecuted before the tribunal and to ultimately obtain compensation, and appears to serve as a barrier to accessing justice.

As with DoFE, the tribunal is located in Kathmandu, creating an additional barrier to justice, in that victims are required to travel back and forth at their own expense. Workers also face potential threats to their safety. At the time of writing, no victim protection law was in place, so the victim’s security could not be guaranteed when testifying in a case against a recruitment agency or an individual agent, many of whom are personally acquainted with the victim or his or her family. This in itself could be a significant disincentive to seeking justice, and was raised as a concern by a number of lawyers interviewed for this study.<sup>233</sup>

## **Outcomes of the Tribunal Process**

Because the decisions of the tribunal are not published it is difficult to analyze the outcomes overall. Further, none of the six migrant workers interviewed in this study who had filed a case at DoFE had their cases registered in the tribunal (although all cases were against individual agents), so their perspectives were not available. However, in the course of this study, the authors obtained 12 cases forwarded to the tribunal from within the 214 sample case files. These cases are merely examples of the types of cases that the tribunal has determined, but they nevertheless support three observations.

First, the cases that reached the tribunal were concerned with violations of Sections 10 and 43 of FEA 2007. As noted above, Section 10 prohibits an individual under-

taking a business relating to foreign employment without a license, and section 43 criminalizes such conduct. All cases pertained to allegations that the accused individual had collected money from the victim with the promise of arranging work abroad, but then failed to send him or her.

To cite one example, in the case of the Government of Nepal acting on the complaint of *Indra Bahadur Raut v. Surya Bahadur Thing*,<sup>234</sup> the complainant (Raut) alleged that the defendant (Thing) took money from him with the promise that Thing would send him abroad to the UAE. The complainant also alleged that the defendant was carrying on the business of foreign employment without obtaining the necessary permit and license.

After investigation, DoFE referred the case to the district attorney, who determined that the evidence was sufficient to proceed to the tribunal. The district attorney advised that the defendants could be charged with violation of Sections 10 and 43 of the FEA 2007. The principle evidence in the case was a deed signed by both parties, which described the amount of money paid by the victim (NPR 80,000, approximately US\$ 800) and the promise to send the worker to the UAE. The deed was supported by the testimony of the victim. The tribunal found the accused guilty of having failed to send the complainant to the UAE, ordered him to compensate the victim the NPR 80,000 and sentenced him to one year in prison. There is no information regarding whether the compensation was in fact paid.

Second, very few recruitment agency personnel are being tried for more serious crimes at the tribunal. Instead, claims against recruitment agencies are being resolved at DoFE or are “withdrawn”. The DoFE legal director could recall only one case in the past year in which a recruitment agency director was prosecuted, namely for defrauding a large number of prospective migrant workers. The reason given for the low rate of prosecution of recruitment agency personnel was that the cases that attract serious charges against recruitment agencies occur rarely (for example sending a minor), or migrant workers are reluctant to prosecute them. For example, where a migrant worker has given money to a recruitment agency but has not been sent abroad within the required three months, DoFE believed that most migrant workers would prefer to wait and hope the job materialized, rather than file a complaint—they understand the process takes time and know that prosecution will result in not being sent. However, the lack of prosecutions could also be due to intimidation by recruitment agencies that results in workers settling, and the case not being registered (as noted above regarding agents).

Third, in many cases, the issue before the tribunal is whether the money collected under the deed was in fact for foreign employment purposes as claimed, or for purposes other than foreign employment. As noted above, experts believe that many cases filed at DoFE do not pertain to foreign employment at all, but rather use the foreign employment system to resolve personal debt cases, for example for household goods, because the system is faster than the regular courts. However, the possibilities of threats or coercion against the victims by recruitment agencies or individual agents cannot be ruled out.

To cite an example, in the case of the Government of Nepal acting on the complaint of *Khagendra Bahadur Shrestha v. Ghanashyam Tamang and Gopal Tamang*, a complaint was filed by Khagendra Bahadur Shrestha stating that the defendants Ghanashyam Tamang and Gopal Tamang took money from him and promised to send him to Dubai for employment. After investigation, the prosecutor instituted a case against the defendants accusing them of committing an offence under Section 10 and Section 43 of the act.

During the proceedings, the victim testified before the tribunal that money was given to the defendants as a loan for household purposes and not as fees for foreign employment. That is, the victim had acted as a moneylender to the defendants, and the defendants had not repaid him. The tribunal decided that the monetary transaction did not occur for the purposes of sending the complainant abroad to Dubai for foreign employment and, therefore, the defendants were not guilty of an offence under the FEA 2007. It is unclear why such cases are not filtered out during the DoFE investigation stage or the prosecutor review stage.

### **National Human Rights Commission and National Women Commission of Nepal**

Nepal has two commissions specializing in human rights and women's rights respectively. The National Human Rights Commission (NHRC) was established in 2000 by statute and, under the interim constitution, is a constitutional body.<sup>235</sup> The commission has powers to receive and investigate individual complaints, as well as to conduct investigations on its own initiative. In recent years the NHRC has undertaken a number of activities related to migrant workers, including a conference in 2012, and a monitoring visit to South Korea and Malaysia.<sup>236</sup> Interviewees noted, however, that no individual complaints regarding violations of the rights of migrant workers had been received or investigated by the commission.

The National Women Commission (NWC) of Nepal was established by statute in 2007 to advocate for the rights of women. Like the NHRC, the NWC comprises one chairperson and four other commissioners, all of whom are supported by a secretariat. The NWC is an autonomous body, and focuses its efforts on promoting gender equality and raising awareness regarding violence against women. To date, it does not appear to have taken up the situation of Nepali women migrant workers in depth.

### 8.3 The Court System

In addition to the specialized tribunal, migrant workers can use Nepal's regular system of courts to seek redress for crimes under the HTTCA or the Civil Code (see Chapter 7- Relevant Laws). District courts hear both civil and criminal cases. District court decisions can be appealed to an appeals court and/or to the supreme court based in Kathmandu.

Criminal proceedings in the district courts usually begin with a complaint filed at a local police station. The case is investigated, and if the evidence is sufficient, prosecuted by a district attorney. Nepal's courts are routinely criticized for being expensive, administratively complicated, non-transparent, and inaccessible to the poor and other marginalized groups.<sup>237</sup> These problems may only have deepened with delays in the constitution-writing process and on-going political tension and instability.<sup>238</sup> Freedom House in 2012 found, for example, that policymakers were preoccupied with transition to a new constitution and were distracted from other critical infrastructural, governmental, and human rights issues.<sup>239</sup> The conflict also substantially increased court backlogs and inefficiencies.<sup>240</sup>

One lawyer interviewed for this study noted that he had handled several foreign employment cases for "cheating" in the district courts—in all cases the migrant worker had initiated the case independently and then contacted him for assistance. However, as noted earlier in Chapter 7, the compensation available under the civil code is lower than that under the FEA 2007 for similar offenses, and thus he believed migrant workers to be better served by filing cases with DoFE.<sup>241</sup> He was of the view that if a case brought in the district courts was appealed to the supreme court, there was a high chance the supreme court would find that the district court did not have jurisdiction over the case, and that foreign employment cases are solely within the jurisdiction of DoFE and the Foreign Employment Tribunal.<sup>242</sup>

Cases from both district courts and the tribunal can be appealed directly to the supreme court. The supreme court has broad remedial jurisdiction granted by the Interim Constitution 2007, Article 107(2).<sup>243</sup> It can enforce rights under the constitution or any other right for which no remedy or an inadequate remedy has been provided, and it can settle constitutional or legal questions "in any dispute of public interest of concern." It can, therefore, hear challenges of law and challenges related to remedies, including the amount of compensation awarded by a lower court/quasi-judicial body such as the Foreign Employment Tribunal.

Nepal Supreme Court decisions are generally not published online, and the authors could not identify from interviewees or other sources whether many foreign employment-related cases have come before the supreme court. Several lawyers practicing in the field of foreign employment noted that a new foreign employment law was being drafted, and they did not want to file cases in the supreme court that could potentially delay any new law while the supreme court deliberated.



## Trafficking and Other Criminal Cases at the Tribunal

Although rarely mentioned by participants in this study, some of the harms experienced by migrant workers (and prospective migrant workers) clearly gave rise to offenses under other statutes besides the FEA 2007. These include human trafficking or transportation under the Human Trafficking and Transportation Control Act (2007) (see Section 7.3-Human Trafficking and Transportation (Control) Act 2007) or other criminal offenses such as extortion, threats of violence or actual violence under criminal law.

Legal experts explained that trafficking or other criminal cases are referred by the prosecutor to the police for investigation and hearing in the regular criminal courts, but acknowledged this happens rarely and only in cases involving sexual exploitation. Indeed, the American Bar Association has concluded that cross-border trafficking for the purposes of labor exploitation is generally only charged under the FEA 2007 and is not deemed to be “trafficking” as such.<sup>244</sup>

This may partly be due to neither the FEA 2007 nor the HTTCA defining trafficking in persons as it relates to foreign labor migration and the HTTCA equating much trafficking with prostitution, whether forced or not (see Chapter 7-Relevant Laws above). This potentially creates confusion among justice system actors about the legal classification of cases that involve the exploitation of Nepali migrant workers.<sup>245</sup> One Nepali judge interviewed by the American Bar Association appeared to incorrectly believe that all cases having to do with foreign employment were under the sole jurisdiction of the Foreign Employment Tribunal.<sup>246</sup> A lawyer interviewed for this study acknowledged that some foreign employment cases could be trafficking, but stated he believed victims would not file these cases because either they did not understand the law, or they wanted a quick resolution which could not be obtained through a trafficking prosecution. A victim of trafficking in persons is entitled to compensation upon conviction of the defendant. The amount of compensation should not be lower than half of the fine imposed upon the offender as a punishment.<sup>247</sup> He did not mention advising his clients about this option.<sup>248</sup>

Other reasons for migrant workers not bringing trafficking cases may be the lengthy delays commonly suffered in the regular court system, and the fact that trafficking is associated with prostitution and highly stigmatized, or is generally seen as a women’s issue not relevant to male migrant workers.<sup>249</sup>

It is unclear how many cases heard by the tribunal involve elements of trafficking.<sup>250</sup> The authors are aware of at least one case of migrant worker exploitation heard in a Nepali court.<sup>251</sup> Analysis of the overall number and type of such cases is not possible because Nepali government data on prosecutions under the HTTCA does not specify whether charges were for labor trafficking, sex trafficking or non-trafficking offenses.<sup>252</sup> From July 2011–July 2012, the Nepali police recorded 118 trafficking cases—all were for forced sexual exploitation.<sup>253</sup> Nepal Supreme Court data shows an increase in trafficking cases being tried by the district, appellate and supreme courts—up to 748 in July 2011–July 2012.<sup>254</sup>

## 8.4 Compensation in the Case of Death or Disability

When a migrant worker loses his or her life or is seriously and permanently injured while abroad, he or she may have access to two sources of financial redress: private insurance and a public compensation scheme called the Foreign Employment Welfare Fund managed by the Foreign Employment Promotion Board.

### Private Insurance

Recruitment agencies are required to purchase life insurance for a migrant worker through the private insurance market as a condition of obtaining government approval for the worker to leave the country.<sup>255</sup> The law requires that the insurance cover migrant workers for loss of life or mutilation (interpreted by an insurance company interviewee as a permanent disability) during the period of their employment contract, up to an amount of NPR 500,000 (approximately US\$ 5,000).<sup>256</sup> The insurance premium is then passed on to the worker. Workers travelling independently must purchase insurance on their own.<sup>257</sup>

Nepal has nine registered life insurance companies (listed on the DoFE website), four of which offer a specialized life insurance product for migrant workers.<sup>258</sup> The registered life insurance companies do not need separate permission to conduct foreign employment insurance business.<sup>259</sup> According to one insurer, this product differs from standard life insurance in that the premium is paid only once (instead of periodically) and a claim can only be made if the worker dies or is permanently disabled.<sup>260</sup> Insurance companies develop their own products, however, and set their own premiums, depending on the age of the worker and the duration of the coverage. Several recruitment agencies explained that the amount of the premium depends on the worker's age; workers aged 18–35 usually pay around NPR 1,800 (around US\$ 18).<sup>261</sup>

Recruitment agencies are not under any legal obligation to inform the migrant worker that he or she is insured, or to explain the insurance coverage. Several civil society organization interviewees were of the belief that migrant workers are rarely if ever informed by the agency or the insurer about their coverage. One noted, “Migrant workers do not have information on the process, they don’t even know why they paid NPR 1,000 [to the Welfare Fund, see next section] or that they have insurance coverage.”<sup>262</sup>

Supporting this view, of the 27 former migrant workers who took part in focus groups for this study, 18 said they were not insured—indicating either that they traveled irregularly and did not know about the insurance requirement, or that they were insured but unaware of that fact. Only 9 said they were given a receipt for insurance with their travel documents.

Purchase of insurance is not limited to regular migrants—any individual planning to work abroad could theoretically purchase life insurance. However, civil society organizations and others believed that irregular migrants are much less likely to purchase insurance, either because their agents are unlikely to inform them of the possibility, or because they depart through India (or another country) and so make travel arrangements there, or because they do not wish to spend the additional money. Consequently, irregular workers are usually not insured prior to departure.

## Claiming Insurance

Data on insurance claims is limited. DoFE does not require insurers to submit data on numbers of policies purchased, or the number of claims made. As part of DoFE’s initiative to reduce forgery of insurance documents, though, the department now requires insurance companies to maintain an online database of details of policy buyers for at least five years.<sup>263</sup> A total of 936,697 migrant workers purchased insurance over the last 18 months and among them 1,159 insured parties have received claims worth NPR 683 million (approximately US\$ 683,000).<sup>264</sup> One insurance company interviewed reported that it sells between 600 and 700 migrant worker life insurance policies per day. Out of these, in fiscal year 2012/13, the number of claims received and paid by the same insurance company for deaths was 217 while that for injuries was 26.<sup>265</sup> Another insurance company indicated that it received approximately 15–20 claims per month—a small payout rate compared with the approximately 20,000 policies it sells per month.

Those interviewed, including civil society organizations, recruitment agencies and an insurer, suggested that the claims process is straightforward. To file a claim for insurance, migrant workers or their families must present documents to prove that the death or mutilation occurred, along with the identity of the insured person and the claimant. According to a recruitment agency interviewed for the study, most insurers require a letter from the recruitment agency, a death certificate from the hospital which is certified by the Nepali embassy, a cargo airway bill of the body, a letter from

the embassy, an immigration letter, the worker's passport and a relationship certificate (*nata pramanit*) verifying the worker's relationship to the compensation-seeker. In case of injury the insured needs to submit a medical report from the hospital abroad and medical report from a hospital in Nepal for the payment.<sup>266</sup>

In some cases, the insured's family will contact the recruitment agency directly for help in claiming insurance. The agency holds the policy and the receipt of purchase, and is usually required to provide a letter supporting the family's claim. The FEA 2007 and Rules 2008 do not place any obligations on recruitment agencies to assist workers or families to make insurance claims, so different recruitment companies may handle the requests differently. The director of one agency explained, "We do not play any big role" and described simply providing the insurance receipt to the worker or family member upon request.<sup>267</sup> Another director said that his staff would manage the whole process for the claimants, particularly in death cases:<sup>268</sup>

The process is quite simple so the families should not have any problems in accessing insurance. In fact we do most of the process and they only go to collect the money. The family members only have to bring the *nata pramanit* letter [relationship certificate] from the village development committee [certifying the relationship between the insured and the claimant], other documents are arranged or collected by us. We have staff to work on the process.

Several civil society organizations also assist migrant workers to submit claims and one organization representative reported that most of his work was assisting workers to file insurance or other compensation claims.<sup>269</sup> He reported that if the migrant worker did not have the above documents, he would contact the recruitment agency, which generally cooperates in providing whatever documents it can.

Recruitment agencies and civil society organizations interviewed generally believed that the insurance system is accessible and effective as a means of redress. The procedures are simple and most eligible workers receive a payment. Receiving insurance also does not preclude workers from receiving compensation from other sources. As one recruitment agency director said:<sup>270</sup>

I think the system is effective. Though the worker has passed away, at least his family members get some relief. Recently, a worker who had gone through our agency passed away in the destination country. His family received NPR 1,200,000 compensation in total—NPR 500,000 from private insurance, NPR 100,000 from the Foreign Employment Welfare Fund, and his employer paid the family NPR 500,000–600,000 compensation. If the companies are good, they pay compensation.

The only complaint respondents made was that insurance appears to be limited to regular workers still within their contract period when the death or injury occurred.

Both civil society organization and recruitment agency noted that many migrant workers have their contracts extended by their employer, but are not informed by their employer or agent that they need to purchase further insurance, or do not know how to do so, and thus they are no longer covered.<sup>271</sup> Women migrants, who mostly travel outside of regular channels, are also invariably excluded from the insurance system.

## **Payment of Claims**

According to an insurer and other interviewees, claims are rarely if ever rejected because fraud in life insurance cases is rare—death and permanent disability are difficult to falsify.

The payment amount depends on the injury. In cases of death, families receive 100 percent of the insured amount, amounting to NPR 500,000 for the death, and NPR 50,000 to cover the funeral. The Nepali insurance company will usually also reimburse the family for the repatriation of the body from abroad up to NPR 100,000.<sup>272</sup> In disability cases, the insurer will determine coverage based on the extent of the disability. In one sample policy, permanent illness, loss of a limb and loss of eyesight in both eyes would result in payment of 100 percent of the insured amount. Other injuries receive a lower level of compensation—for example loss of eyesight in one eye received 50 percent compensation.<sup>273</sup>

In general, recruitment agencies and NGOs viewed private life insurance as a relatively straightforward method of obtaining redress for the unfortunate few who need to submit a claim. However, given that the insurance companies are largely based in Kathmandu, it is likely that travel to the capital to arrange documents and file the claim may pose a problem for some migrant workers and their families. Because none of the migrants who participated in this study needed to claim insurance, the authors were unable to obtain the perspectives of workers and their families regarding the insurance system.

Another shortcoming of the current insurance system is its limited coverage against deaths and mutilation only. In some cases classification of injury as permanent rather than temporary disability might take several months, delaying payment.<sup>274</sup> Moreover, many workers experience medical problems, in some cases leading to voluntary or involuntary return, but without general medical insurance are unable to seek proper medical care either in the destination country or upon return to Nepal.

The most significant gaps identified were the lack of information provided to migrant workers and their families regarding insurance, the lack of centralized data on insurance purchased and claimed by migrant workers, and the effective exclusion of workers who leave Nepal irregularly or who find themselves working outside the term of their employment contract.

## Foreign Employment Welfare Fund

Another potential source of compensation for families of workers who have lost their lives while abroad, or suffered a permanent disability, is the Foreign Employment Welfare Fund managed by the Foreign Employment Promotion Board (FEPB).

The welfare fund is a public fund that was established in 2008 under FEA 2007 “for the social security and welfare of workers who have gone for foreign employment and returned from foreign employment, and their families.”<sup>275</sup> Every worker leaving for foreign employment must pay NPR 1000 (approximately USD 10) into the welfare fund to obtain DoFE approval for departure.

The FEPB is authorized to use the welfare fund to carry out programs and activities to improve worker welfare.<sup>276</sup> This includes skills training for workers, employment programs after workers’ return, medical treatment for workers’ families, and establishment and operation of childcare centers for children of female migrant workers.<sup>277</sup> So far, the welfare fund has been used primarily for:

- Repatriating workers who have been mutilated in the course of working abroad, providing compensation to those workers, and providing financial assistance to those workers upon return, or to their families;
- Where a worker has died while abroad and “his or her dead body is not attended by any one, bringing the dead body to Nepal and providing financial assistance to his or her family.”<sup>278</sup>

At the time of writing, the FEPB had initiated other efforts such as training for out-bound migrant workers and empowering returnee women, as well as seeking to increase the number and types of reintegration programs.<sup>279</sup>

## Finances and Management of the Foreign Employment Welfare Fund

The welfare fund is funded by: the fees migrant workers pay before departure, and the interest earned by investing the deposits; license fees collected from recruitment agencies and training institutions; any other amount received from foreign employment-related institutions; and grants received from local or foreign entities.<sup>280</sup> It is held by a commercial bank of the FEPB’s choice, and decisions to spend from the fund are made by a vote of the FEPB.<sup>281</sup>

Since its creation, the welfare fund has gained significant value. At the end of 2009/10, the fund was estimated to hold NPR 580 million,<sup>282</sup> and by March 2014 it had increased to NPR 2.14 billion.<sup>283</sup> The FEPB has spent very little of the money available. One media report stated that the fund had gathered NPR 540.03 million between 2007 and 2009, but only spent NPR 84.5 million, leaving it with a surplus of NPR 453.8 million.<sup>284</sup> Reportedly, many of the programs proposed to be supported by the welfare fund have yet to be implemented, and the fund has focused solely on rescue, repatriation and compensation in death cases.<sup>285</sup>

In addition, the FEPB has been accused of mismanagement of the fund. For example, in 2010 a board member accused the board of approving items that were not allowed under the law, including refurbishing the office of the Minister of Labor and Employment, and for fuel and maintenance of his vehicles.<sup>286</sup>

### **Paying into the Welfare Fund and Awareness of the Fund**

The FEA 2007 and Rules 2008 do not specify who is responsible for making the payment into the fund. In practice, recruitment agencies generally pay the NPR 1,000 amount, and then charge it to the worker as part of his or her recruitment fees. Individuals traveling independently pay into the fund on their own.

Information about the welfare fund is provided to workers in the two-day pre-departure orientation. Unfortunately, however, many workers do not attend this orientation (see Chapter 9—Obstacles to Access to Justice). Similar to insurance, many civil society organizations were of the view that recruitment agencies do not inform migrant workers about the welfare fund, and do not explain that the fee has been paid as part of the overall recruitment fees. Not one of the 54 migrant workers interviewed or participating in the focus group discussions mentioned payment into the fund as one of the steps they took pre-departure.

### **Procedures for Making Claims to the Welfare Fund**

Claims for financial assistance can be submitted to the FEPB in cases of death or mutilation but only by workers who maintained regular status and who have paid into the fund.<sup>287</sup> In cases of death, the nearest heir to the deceased worker may submit the claim.<sup>288</sup> In cases of mutilation, the injured worker must submit the claim directly to the FEPB Secretariat. In both cases, the migrant worker or heir must travel to Kathmandu to submit the documents. To submit a claim the worker or family must demonstrate:

- The worker was a regular migrant authorized by DoFE to work abroad;
- The death or injury occurred abroad during the period of the worker's employment contract; and
- The petition is submitted to the FEPB Secretariat within one year of the death or injury.<sup>289</sup>

Documentation required to support the claim, as listed on the application form includes:<sup>290</sup>

- Worker's or deceased worker's passport;
- Employment contract;

- Evidence of the worker or deceased worker's citizenship; and
- Letter of recommendation from the relevant Nepali embassy.<sup>291</sup>

In addition, claimants for financial assistance in case of death must provide evidence of their relationship to the worker, photographs of the next of kin, and the death certificate. Claimants in the case of mutilation must also provide evidence of the injury including photographs, a medical report<sup>292</sup> and prescription for treatment from a Nepali government hospital after returning, as well as the return air ticket to Nepal.<sup>293</sup>

In both cases, the maximum amount of assistance is NPR 150,000 (approximately US\$ 1500).<sup>294</sup> This is a flat amount in cases of death. In cases of injury, the amount of assistance provided depends on the nature and gravity of the injury. According to the former Acting Executive Director of the FEPB:<sup>295</sup>

Generally, it takes around half an hour to one hour from receiving an application to providing compensation. However, in case of disability-related compensation when the technical committee needs to determine the level of disability, it takes time. It may be difficult to determine the level of disability in some cases like mental depression etc.

Forms of Compensation paid out to workers or their families in 2013/2014 are set out below.

**TABLE 9: Welfare Fund by Nature of Claim and Number of Recipients 2013/2014**<sup>296</sup>

Nature of Claim	Number of Recipients
Death	570
"Mutilation"	58
Medical Expenses	13
Repatriation of workers in distress to Nepal	25
Repatriation of deceased to Nepal	20
Transportation of deceased from Kathmandu to home community	254

Source: FEPB

## Assessment of the Welfare Fund

As noted above, awareness of the fund among migrant workers participating in this study was low. This lack of awareness could be attributed to the small number of workers who attended orientation training, and the failure on the part of recruitment agencies to inform the workers about the fund.



None of the migrant worker participants had submitted a claim to the fund, so their perceptions of accessibility and fairness are not available. An FEPB official indicated his belief that the process for receiving compensation from the fund is smooth and effective. As with the private insurance, however, lawyers and civil society organizations participating in this study noted a significant gap in protection in the exclusion of migrant workers sent irregularly, even if without their knowledge, who therefore may not have paid into the fund.<sup>297</sup> This highlights another way in which difficulties in accessing justice for labor migrants are compounded when that worker travels outside of the government-regulated system.

## 8.5 Embassy Assistance for Nepalis Abroad

Many migrant workers who experience harms while abroad attempt to resolve their cases in the destination country, and many of those seek assistance from the Nepali embassy. Of the 54 migrant workers interviewed for this study, 32 (approximately 60 percent) reported active interaction with embassy officials at some point in their journey.

This section outlines the services that the Government of Nepal provides through its embassies to citizens who wish to file a claim against a sponsor, employer or agent abroad. Assistance may include facilitated negotiation, connection with legal advice, or assistance in accessing the dispute resolution forums in the destination country such as labor courts. However, each embassy operates with relative independence and thus the embassy services depend on both the destination country context and the ambassador in that country at that time.<sup>298</sup> This section draws mainly on interviews in respect to Qatar, where the largest population of Nepalis in the Gulf is based.

These interviews suggest that the core work of labor attachés and other embassy staff regarding migrant workers is assisting irregular workers to return home, for example by arranging exit permits and temporary passports, and repatriating the bodies of deceased workers or workers in distress. The Ministry of Foreign Affairs (MoFA) website also states that “consular and legal consultation services” for migrant workers in destination countries include:

[I]nvestigation, rescue and repatriation of injured migrant workers, deceased workers, stranded workers, workers without money, workers who do not receive work as per contract, workers who enter a destination illegally and become irregular workers; and provide compensation, insurance, and remaining remunerations of deceased or injured workers.<sup>299</sup>

These functions that are often essential to protect the rights of migrant workers and their families are worthy of further study. However, they are not addressed in detail in this section, which explores the work of embassies in obtaining redress within the destination countries.

## Consular Services of Embassies

Nepal has embassies in all six Gulf Cooperation Council (GCC) countries (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates) as well as in Israel,<sup>300</sup> all of which offer some form of consular services to its citizens. Notably, Nepal does not yet have an embassy in Lebanon despite the significant number of female migrant workers in that country.

There are no regulations and no formal government guidelines outlining services provided to migrant workers by Nepali overseas missions. Some embassies do have labor attachés appointed by the Ministry of Labor and Employment, however, charged with general protection duties.<sup>301</sup> The first labor attachés were appointed in late 2011 after the MoFA and the MoLE agreed that the attachés would operate under the authority of the ambassador.<sup>302</sup> As of April 2014, Nepali embassies in four Gulf countries (Kuwait, Qatar, Saudi Arabia, and the United Arab Emirates) have a labor attaché, and the government has plans to place labor attachés in Bahrain and Oman.<sup>303</sup>

The labor attachés' responsibilities include research and advice to Nepal's government regarding the labor market in the destination country, and support to migrant workers. The latter includes dispute resolution, repatriation of workers who have been made "helpless," repatriation of the remains of a deceased worker, and "providing necessary advice" to workers including to "discourage them to do any work other than set forth in the agreement."<sup>304</sup> Interviewees confirmed that this comprises the bulk of the services embassies provide to migrant workers in the Gulf.<sup>305</sup>

Whether embassies are responsible for giving more concrete advice and support to migrant workers who face charges or have complaints against their employers is unclear. The law does not specifically task either embassy staff nor labor attachés with these functions. Nor are they explicitly charged with gathering information on specific employers or agencies abroad, particularly those that have a poor reputation regarding treatment of workers. Indeed, a former Nepali ambassador to Qatar expressed the view that:

There are no specific mandate[s] for embassies to work on migrant workers issues. The primary aim of all Nepali embassies in all the destination countries is 'economic diplomacy'—how do you get the countries to invest more in Nepal. However, for countries like Qatar, where there are lots of Nepali migrant workers, you inevitably end up working on migrant workers' issues just because of the sheer number of Nepali workers there.

However, another former ambassador was clearly of the view that embassies must provide services to migrant workers, indicating the range of different approaches that ambassadors may take. He noted: "It is the foreign missions who are responsible to protect the interests of our citizens."

## Assistance Services in Practice

Despite the lack of official emphasis on access to justice for migrant workers, it appears that most embassies do provide some kind of ad hoc legal assistance. In Qatar under former ambassador Sharma, for example, the embassy's services included directly negotiating with employers on behalf of Nepali citizens if the worker wished to continue working, referring the migrant worker to other services such as the Qatar Labor Department or the courts, or putting a worker in contact with affordable legal advice.<sup>306</sup>

In some cases the embassy may assist groups of workers with a grievance against an employer, that is cases of industrial action. In one case, for example, 200 migrant workers arrived at the embassy alleging non-payment of wages and other violations. The embassy hired three buses to return the workers to the worksite, contacted the police, and then facilitated a compromise. However, the former ambassador noted that such cases were rare because the Government of Qatar discouraged embassies from getting involved in labor disputes and requested that disputes rather be referred to the Qatar Labor Department.<sup>307</sup>

The embassy in Doha does not have a lawyer on staff, but instead has an arrangement with a Qatari lawyer who assists the embassies of a number of countries.<sup>308</sup> If the migrant worker wishes to take legal action, the lawyer can represent the workers in return for a contingency fee of 20 percent of any compensation awarded. While clearly expensive, one former ambassador reported this was a lower rate than if the migrant worker had contacted a private lawyer independently, where a contingency fee of 40–50 percent was common.

Former ambassador Mishra said that, during his tenure, the labor attaché would assist migrant workers to register cases with the labor court and provide advice and a translator. He noted, however, that the process was challenging for migrant workers because they are generally not provided with food and accommodation by their employer during the proceedings (although that is apparently required under Qatari law) and the embassy does not have a long-term shelter. Accordingly, he said that most workers gave up on their cases and accepted only a return ticket home from their employers. For domestic workers, the challenges were greater because they are not recognized under Qatari labor law and so must go to the civil courts, a much longer and more expensive process than the labor courts.<sup>309</sup>

Amongst participants in this study, migrant workers who had contacted their embassy reported that embassy staff or the labor attaché (participants were unaware which person assisted them) took a range of actions, depending on the type of case and the individual staff member. For example, three former migrant workers reported that embassy officials, including an ambassador in one case, referred the case to the labor court and advised the workers (but did not arrange for legal representation) during the proceedings. Another three reported that the embassy directly communicated with the

employer to resolve the dispute, and one said that the embassy helped him to recover lost wages. Three others reported that embassy officials interacted directly with police on behalf of workers who had been arrested, but another stated that the ambassador advised him to turn himself into the police for having false documents in order to be sent home:

The quarrel [with my sponsor] became very intense. I took legal steps. I stopped working and went to the embassy. I told my problem to the ambassador. He checked my visa and told me that I have a visa used for domestic workers, which I did not know about. I panicked then and cried. He told me to contact the Crime Investigation Department (CID) and they would send me back. I said that they will put me in jail and press charges. He told me to contact the CID and then he would do the follow-up. I went to the CID and they threatened [the employer] saying that since my contract is already over, the employer cannot stop me and should let me go. CID threatened him by saying that they will blacklist him if he does not come on track. After 10 days, the employer got me a ticket. I was deported and now I cannot go there for the next two years. Nepal embassy did not provide me any help. I did not do anything wrong for this. I feel I did not get justice.<sup>310</sup>

Some workers contacted the embassy while they were in what they referred to as “prison” (most likely immigration detention centers) in the destination country. Indeed a number of workers tried to get themselves arrested, as suggested by the statement above, so that the destination country government would deport them. After their arrest, the embassy would assist with processing documents.

## **Awareness and Accessibility of Embassy**

Overall, Nepali migrant workers seemed familiar with the Nepal embassy as a source of assistance in GCC countries—in fact, the embassy was the only Nepali institution that most migrant workers were aware of. However, there was a significant gender difference in this regard; whereas all male migrant workers were aware of the embassy, only one female migrant worker out of nine focus group participants knew that the embassy existed before she left.

Migrant workers were not provided with thorough information about Nepali embassies prior to departure. The orientation training curriculum, under Part 2, Section 8, covers embassies under the title “Workers’ Behavior and Attitude, and Welfare, Rights and Responsibilities” and mentions that “the Nepali embassies abroad are primarily active for the welfare, security and necessary support to the Nepalis.” In countries where there are no Nepali embassies, “various other supporting agencies could be contacted.”<sup>311</sup> No additional information is included in the curriculum. The country-specific leaflets that are circulated by the Migrant Resource Centre (housed in the FEPB) provide the address and contact information of the embassies in specific countries, but do not provide any other information such as the nature of services provided or consular rights.

Even workers who know to contact the embassy for assistance encounter barriers to access. Two migrant workers who returned from Saudi Arabia, for example, cited their distance from the embassy as a barrier to accessing its services, though this is less of an issue for workers in smaller countries like Qatar.

Other barriers include the lack of a clear legislative mandate to assist migrant workers, and lack of adequate resources to service the needs of migrant workers. All experts interviewed with knowledge of embassy services agreed that Nepali embassies were severely under-staffed and under-resourced to meet the diverse needs of migrant workers who sought assistance with their cases. One former ambassador noted that the number of people available to work on migrant labor issues was insufficient to meet the demand, and they were hampered by not having a lawyer on staff.<sup>312</sup> For more on resources and training as barriers to accessing justice (see Chapter 9—Obstacles to Access to Justice).

## **Outcomes and Satisfaction with Embassy Services**

Worker satisfaction with embassy services appears to be highly dependent on the individual officials who responded to the worker's complaints. Some workers found embassy staff to be very helpful, particularly with preparation of new documents and arranging a flight home. Others, however, were dissatisfied with their treatment. Six (25 percent) of the 24 migrant workers in our sample who had contacted an embassy reported that staff did not actively help or refused to help them. Instead, they attempted to pacify or minimize their concerns. One returned worker reported that an ambassador told him: "Nepalis want to return to Nepal because they get nostalgic and not because of any problems created by the employers." Another said that the ambassador told him simply to wait in detention until his case had been processed. One migrant worker even alleged that the official who visited him in a Saudi Arabian jail demanded a 200 Riyal bribe in order to help him. He paid this money and in return received replacement travel documents and an air ticket.<sup>313</sup>

Those who did receive assistance mentioned that it was after significant delay, and that they contacted the embassy several times before receiving a response. In other cases, the embassy was hamstrung in the assistance it could provide to workers, having no legal powers in the destination country. And in at least one case, the embassy staff advised workers to get themselves arrested so their case would be processed more quickly.

## Jagadish's Experience

Jagadish had a BA in mathematics but could not find employment in Nepal. To support his family, he left in 2011 to work in Qatar as a foreman on a construction site. A relative in Nepal had arranged the position for a salary of 1,500 Riyal per month, so Jagadish travelled independently, taking out a loan of NPR 300,000 to cover his expenses including obtaining a visa, labor permit, and insurance, from a travel agency in Nepal. However, he did not receive a contract before departure, and did not attend a pre-departure orientation. All he knew from friends in Nepal was that "If I suffer any problem, our embassy will work to bring justice to us." He recounted:

*As soon as I reached Qatar the company took all of my documents and I couldn't access them again. The work was what I expected but we weren't paid at all. We weren't even given money to buy food and were often hungry. Also, we weren't given secure lodgings but instead had to sleep in the reception of the company—the owner of the official lodgings wouldn't let us enter because the company had not paid him for five months.*

*After enduring this situation for three months, I went to the embassy. In the embassy, I filled out a form describing my problems and I talked to the ambassador who was very helpful. But then the ambassador got transferred and all my hopes were shattered. The new ambassador was not sympathetic at all—he said that I was just homesick and wanted to get home. I told him that I wanted to work in Qatar if the company paid me.*

*Finally, the ambassador wrote a letter to the labor court and I went there every day for seven days to follow up on my case. The court told me to bring the company owner to the court, but I could not make him come. On the sixth day, the court itself called the owner, but he did not respond. The court suggested I take my case to the high court, but this was not feasible for me so I went back to the embassy to ask for a better alternative.*

*The ambassador called the owner but he did not respond again, and the embassy didn't do anything else to contact him. In the end, I just decided to return to Nepal but it was complicated because I didn't have my documents. There were many Nepalis like me, without any documents, waiting to return to Nepal. One day, luckily, I found my employer and showed him the complaint papers I filed at the labor court. I told him that if he didn't return my passport to help me return back home, he would land in jail. He agreed then to give me my passport and I came back.*

*I am not satisfied with what happened but I am glad I am home. All I wanted was my three months' salary. The embassy did not seem to take my problem seriously—all they did was write one letter to the labor court, but gave me no other help.<sup>314</sup>*

Broadly speaking, Nepal has taken important steps to improve services for migrant workers abroad, including creating embassies in many major destination states, and placing labor attachés in some of those. However, based on the experience of migrant workers in this study, embassies are not adequately advising migrant workers about their legal rights or supporting them to seek redress in the destination country. When workers encounter problems in employment, embassy assistance appears heavily weighted toward arranging replacement travel documents and returning the workers back to Nepal, rather than assisting them to obtain redress for the harms suffered. At least one civil society organization representative noted: “[Labor attachés] are totally not doing what they are expected to do. Although they render some help in giving migrants justice, they should do way more than what they are currently doing.”<sup>315</sup>

### **Nepali Networks in Destination Countries**

A number of Gulf countries with large Nepali populations have cultural or social organizations that provide non-resident Nepalis (NRNs) with much-needed support to fill the service gaps left by embassies.

In Qatar, this assistance has become formalized through a cooperative agreement between the NGO Pravasi Nepal Coordination Committee (PNCC) and the MoFA. PNCC has one staff member, a former migrant worker, based in Qatar who has been acting as a social worker to support Nepalis in distress since late 2012. He provides advice, counseling and in some cases accompanies migrant workers to various government agencies, and also assists them in communicating with the embassy.

PNCC’s headquarters in Nepal also helps to coordinate assistance in destination countries with Nepali networks in those countries. As the organization explained:

*We are helped by various organizations in the destination countries. For instance, in Kuwait, the NRNs help us; in Saudi Arabia, not just the NRNs, but also associations of migrants belonging to various Nepali ethnic groups also help us. Similarly, there are various migrants groups organized around their home districts in Nepal, like Kaskeli Samaj (Kaski Society) and Palpali Samaj (Palpali Society). As all of our members in Nepal are returnee workers, they have connections of some form or another with workers in the destination countries. This helps sorting out the problems at the destination.”<sup>316</sup>*

## 8.6 Direct Negotiation and Informal Methods of Seeking Justice

Despite the formal mechanisms available above, research conducted for this study indicates that the vast majority of people who suffer harms within the labor migration process never access these mechanisms, and instead use informal channels to seek redress.<sup>317</sup> This can be attributed, at least in part, to the numerous obstacles to accessing formal justice set out in detail in the next chapter. It can also be attributed to the diversity and sociopolitical history of Nepal. Nepal is an extremely diverse country, with 125 caste and ethnic groups and 123 spoken languages.<sup>318</sup> Most Nepalis live far from Kathmandu in remote communities. As a result, disputes of all kinds are often handled at the community level. For disputes related to foreign employment, this is particularly true when the dispute involves a local agent.

Methods used at the local level include (a) self-help in the form of direct negotiation or confrontation; (b) reporting to local authorities, primarily the police; (c) using traditional bodies such as *Gram Parishad* or *Panchayats*; and (d) informal mediation. None of these methods is regulated, and thus determining a standard procedure is impossible. The use of informal methods was particularly pronounced in Dhanusha district, a historically “excluded” region, with a weak government presence, and where the Madhesi communities have developed their own mechanisms for redress and justice.

Self-help and the use of informal methods are not explicitly sanctioned by FEA 2007. In fact, several interviewees expressed concern about the use of informal mechanisms, such as informal mediation carried out by civil society groups. A review of these methods of dispute resolution and perceptions of their effectiveness reveals some of the benefits and challenges of avoiding more formal mechanisms.

### Direct Negotiation

Some of the migrant workers interviewed for this study took up their complaints directly with the individuals they believed to be responsible for the harm. In Nepal, this was usually the individual agent who had recruited them (13 of 54), whereas abroad migrant workers often sought to directly negotiate with their sponsors to improve their situation.

In the case of Nepal-based individual agents, the migrant worker usually had the agent’s contact details or knew how to contact him or her through family or friends. In most cases, the worker made contact with the agent after having returned home, either by telephone or in person. Most did not ask for compensation for what they had suffered abroad, simply the return of the fees they had paid at the outset. The agent usually refused to pay, however; in just two cases did the agent agree to pay any compensation, and in one of those only half of the fees were refunded. Some of the male



migrant workers participating in this study then took the matter further and filed a case at DoFE (see description of DoFE processes above in Section 8.1). The female migrant workers participating in this study believed filing a complaint with DoFE was not an option because they had, in most cases, travelled irregularly.

### Asha's Case

Only one of the 54 migrant workers interviewed for this study, Asha, who was particularly persistent in pursuing the individual agent responsible for sending her abroad, was able to obtain even a partial refund of her fees after learning that the agent had deceived her about the nature of her work abroad. As another woman in Asha's focus group noted, "People like Asha-auntie who can speak up and fight with the agent are able to get their money back. But if you are quiet and do not say anything like the other sisters here, you will not be able to get anything." Notably, Asha had no knowledge of any of the formal mechanisms, or how to access them, and saw the direct confrontation with the agent as her only option.

*I went abroad to Dubai and stayed there for 13 months, through a recruitment agency in Kathmandu. My agent told me that I would work as a domestic worker for 24 days each month and my monthly salary would be NPR 20,000 (around 1200 Dirham at that time). However, I did not receive any contract that listed all this—I was only told verbally. All I had was my citizenship ID and my passport. I did not attend any training.*

*Before I went abroad, I was very excited thinking about the money I would be able to save. But when I reached Dubai, I was paid only 1,000 Dirham per month, not 1,200. After four months in my employer's house, I went back to the recruiting office and stayed there for 16 days to wait for a new position. They transferred me to another workplace where 13 other Nepali women worked. It was a school and although the work and the hours were decent, again I was not paid enough. The school told us it paid the agency 3,500 Dirham over three months per worker, but we received only peanuts—just 700 Dirham each, and from that the agency deducted food, cooking gas, and accommodation costs, so we ended up with almost nothing.*

*Eventually [after disputes with the school] 11 of the women wished to leave so they went back to Nepal, one at her own expense. The three of us who remained could not leave, but we no longer had employment. For one month we lived without water or electricity. It was extremely hot, about 60–65 degrees [celsius].*

*We did not know anything about legal processes, and I didn't know there was such a thing as an embassy to contact.*

*So all I could do was call my agent from Dubai many times and yell at him, "How can you, being a Nepali, sell another Nepali like this? Aren't you ashamed of yourself? I paid NPR 75,000 and you better get me out of here or else...you know what's going to happen to you when I reach Nepal." The agent told me not to threaten him and hung up. I could not do anything to go back to Nepal without his help. But finally, finally, finally, finally, my brother helped me and I returned to Nepal. My brother had to pay about NPR 150,000 (about US\$ 1,500) to bring me back to Nepal. This was because I did not complete my two-year tenure.*

*I went to meet my agent and insisted that he return my money. I said, "You need to give me my money back. Otherwise, I will burn this 'manpower' down. I will do everything possible." After I said that, he could not even look me straight in the face. He then wrote a note saying that since "so-and-so" person could not work and has returned back to Nepal, he is returning the money. He wrote down a check for NPR. 65,000 but deducted NPR. 10,000 for the [departure] airfare.<sup>319</sup>*

Migrant workers who experience harm within the destination country similarly may choose to first address their grievances directly with their employers. Of the 54 workers interviewed for this study who reached their destination, 15 reported confronting their employer, usually demanding that they be paid according to the contract, and in some cases staging a strike with other workers. Primarily these were men working in construction. Women migrant domestic workers usually chose to leave their employer and return to their sponsor when they weren't paid, or they accepted the lower wage.

Few of the migrant workers interviewed were successful in their efforts to negotiate their conditions after they had arrived. Of the 15 construction workers who directly approached the employer, only two succeeded in entering into a negotiated settlement. However, even these two settlements were compromises and not what the worker was due under his contract. For example, one migrant worker was promised 800 riyal a month, but when he reached Saudi Arabia, he found his wage would be 400 riyal. He managed to negotiate an increase to 600 riyal.<sup>320</sup>

In the other case, the negotiated settlement was later ignored by the employer. A group of migrant workers protested their low pay and the company agreed to pay them a bonus of one and a half months salary. But after they returned to work, no bonus was paid, and the company denied the agreement. The company then intimidated the

workers into not taking the matter further by threatening to refuse to pay for their ticket home, leaving them stranded.<sup>321</sup>

Other efforts to pressure employers had even poorer outcomes. As one worker in Qatar recalled:<sup>322</sup>

We were about 500 Nepalis in the camp and all of us staged a protest demanding a raise in our salaries by 200 riyal. We also demanded the visa fee be reimbursed. The recruitment agency had told me that the [employer] company would pay for my visa, but when we reached Qatar we found we had to pay a visa fee of 1,200 riyal ourselves. The protest lasted for 2–3 days. I didn't know anything about Qatari law or the legal consequences of protesting. All Nepalis were protesting so I joined in. But the police came to the camp and took us to jail. The company was not willing to reimburse our visa costs or increase our salaries and it told us we should leave if we didn't want to work within their terms and conditions.

Despite not reaching a settlement through direct negotiation or action, very few migrant workers took further steps to seek recourse through other redress mechanisms, either because they were afraid of retaliation, or they did not know what steps to take.

## Reporting to Local Police

Another strategy used by some migrant workers is reporting to local authorities in their communities.<sup>323</sup> The law and rules governing foreign employment are silent on the role of police regarding migrant worker complaints. The FEA 2007 provides only that police are to “provide necessary assistance” to DoFE investigation officers who are investigating violations of the act (Section 61(5)), and to assist with the arrest of an accused if DoFE issues a warrant. Police may also arrest a suspected offender without a warrant and present him or her to DoFE (Section 62).<sup>324</sup> However, the act does not authorize police to investigate migrant worker complaints on their own initiative.

All experts interviewed for this study were of the view that DoFE alone had jurisdiction to conduct investigations into foreign employment cases. The exception to this, they explained, was if the complaint included criminal matters that do not come under the FEA 2007 such as threats or violence related to a migration dispute. As a sub-inspector in Janakpur explained:<sup>325</sup>

Even though we receive complaints against agents or sub-agents, according to the law of Nepal, we are severely restricted from processing cases related to foreign employment at the local level. This is why we do not receive or register such cases. We do receive cases that are not directly problems of migrant workers, but are linked to the violation of peace and security. That is, police intervention occurs when returnee migrant workers or their families are involved in a dispute with local agents which could threaten peace and security.

In practice, it appears that many migrant workers do in fact contact the police for assistance; 11 of the 54 migrant workers interviewed for this study contacted the police when seeking redress in Nepal (note that only 26 migrant workers sought redress in Nepal).<sup>326</sup> Five of those complaints were made against individual agents for fraudulently taking their money but not sending the complainant abroad. In the remaining six cases, the migrant worker returned from abroad after finding that the work or conditions were different from what was promised. Workers primarily sought police assistance to get hold of the agents and get their fees returned.

Migrant workers who contacted police had widely divergent experiences. In five cases, the police referred the migrant worker to DoFE and, in some of those cases, assisted the worker to make the initial contact with DoFE. One migrant worker described how the police arrested the accused agent after a complaint was filed and then took the person to DoFE in Kathmandu for investigation:

The police helped me a lot by arresting the agent. The police brought him into custody from Jhapa to Kathmandu and charged him at the Hanumandhoka police station. A month later he was taken to the department with the help of the police.

In another case, after some convincing, the police negotiated with the agent to obtain some compensation for the migrant worker, but did not refer the worker to DoFE; negotiation between parties to a criminal case is reportedly common practice.<sup>327</sup> The interviewee explained:<sup>328</sup>

At first, the Nepali police did not take my problem seriously. But in Qatar, the Qatari police had given me a letter requesting the Nepali authorities to punish the agent. I showed this letter and other papers I had to the police and then they agreed to talk to me. They accompanied me to the agent's house and the agent assured me in front of the police that he would pay back the 400,000 rupees I was demanding.

Unfortunately in this case, the agent later reneged on the agreement, pleading poverty, and paid the migrant worker only NPR 100,000.

Police would not always agree to help migrant workers. In one case, the local police refused to help a migrant worker who returned home after 18 months because conditions were inferior to what was promised. Instead, the police suggested, “[he] should have returned immediately if what the agent promised was different from what [he] got from the company.”<sup>329</sup>

The differences in police response may be due to differences and gaps in training regarding the handling of migrant worker cases, different perceptions of police authority or jurisdiction to handle migrant worker cases, lack of will on the part of the

police, or a reliance by police on more traditional methods, such as mediating disputes between the parties.

### Traditional Village Assemblies (*Panchayats*)

*Panchayats* are traditional structures of local self-governance in Nepal.<sup>330</sup> Although *panchayats* were replaced by local government VDCs during the reinstatement of democracy in 1990, some rural areas in Nepal still have active *panchayats* that operate alongside the VDCs.<sup>331</sup> One of the three districts visited for this study, Dhanusha district, had *panchayats* at the village level that continued to hear local disputes.

Since *panchayats* are no longer formal institutions, they do not have official written procedures for receiving or adjudicating a dispute in their community. Most comprise of around five villagers, usually elite and learned men of the village, of 21 years of age or older.<sup>332</sup> Any person who wishes to seek the *panchayat's* assistance approaches a *panchayat* member, and that member will then contact the other members and set a date to assemble. Both parties to the dispute will then come before the *panchayat* and the local community and present their case. The *panchayat* members make their decision and announce it.<sup>333</sup> Village *panchayats* do not have any enforcement capabilities and there is no appeal mechanism.

Of the 32 migrant workers interviewed from Dhanusha, three went to their respective village *panchayat* to seek redress.<sup>334</sup> One of the migrant workers approached the *panchayat* immediately upon return from the destination country, and the others contacted the *panchayat* when the local police refused to help them. All three described it as their perceived last resort, being unaware of DoFE and tribunal processes available in Kathmandu.

All three cases brought by the migrant workers pertained to conditions of work in the Gulf that were significantly inferior to what was promised by their agents. Two were promised work as electricians but found themselves working as building laborers for less than half the agreed salary. Another worked in a bakery but for significantly longer hours than promised and for a lower salary. The agents did not deny that the conditions were different, but in two cases blamed the migrants for their situations.

The *panchayats* took different approaches to this problem. In one case, the *panchayat* ordered that the agent return the fees paid by the worker with interest. In a second case, the *panchayat* ordered the agent to return the fees minus an amount to cover the worker's flight, and an effective penalty because the worker came home immediately (it is unclear why this factor was judged to weigh against the worker).<sup>335</sup> The amount ordered to be repaid was half the amount of the fees initially paid by the worker. In the third case, the *panchayat* decided wholly in favor of the agent. It found that the worker was forced to return to Nepal because of a fire at the bakery, so the agent was not responsible. It did not consider the original deception regarding the conditions of work abroad.

The migrant workers' responses to these outcomes were predictably mixed. The first migrant worker was pleased, noting: "I am more or less satisfied. At least [the agent] gave me the amount that I had invested. But he should have given me the interest amount as well. The *panchayat* helped me a lot in this. It is with the help of the *panchayat* that I got my money back." <sup>336</sup> The others were not as satisfied. In the third case, the migrant worker believed that the agent had swayed the *panchayat*, indicating the potential for local political and power relationships to influence proceedings. He said: <sup>337</sup>

A public hearing was held in the *panchayat*, but the attendees were all fellows of the agent. They gave him a clean chit and instead accused me of working there for 18 months and claiming compensation. The *panchayat* also said that it was not because of the agent that the company was burnt down, so he might not compensate us.

Clearly this is a very small sample and cannot be said to represent the decisions of *panchayats* more generally. But these examples suggest some general conclusions. Most significantly, each *panchayat* is different, and without common standards by which to come to decisions, they may make what appear to be arbitrary decisions. The *panchayats* weighed similar pieces of evidence differently and in some cases ignored arguments and evidence brought by the complainant.

On the positive side, the workers had a sense of having had a hearing before the community. In all three cases, the process was relatively quick, ranging from one week to a few months. In the first case at least, the agent did return the money at the behest of the *panchayat* (but he did not pay the interest ordered), although he had previously refused a similar order by the police. This suggests that the *panchayats* have unofficial enforcement authority at the local level and at least under some circumstances, their decisions are respected.

All three of the cases in this sample were brought by men; none of the women who participated in focus groups mentioned contacting a *panchayat*. This could be simply because the number of women in the study sample was small and did not include women who had used this option. However, it might also be attributed to a sense that the village leadership, all of which is male, would not listen to women's concerns and speaking out before a community about experiences abroad may be very difficult for many women. It may also lead to shame and stigmatization, particularly for those who had traveled irregularly through India. For instance, a study conducted by Saferworld in three districts of Nepal concluded that "traditional justice mechanisms (which includes the *panchayat*) in general, particularly in Dhanusha and Panchthar, were found to systematically discriminate against marginalized groups—particularly women, the poor, lower castes and other ethnicities."<sup>338</sup> Migrant women workers' access to traditional decision-making bodies warrants further research.

## Informal Negotiation and Mediation

The fourth means identified by workers to resolve disputes and/or seek redress outside of the formal system is through negotiation and mediation, usually conducted by a civil society organization or local official. Some organizations will negotiate on a worker's behalf, or organize meetings between the migrant worker and other private parties, such as recruitment agencies or agents. Study participants generally referred to these strategies as "mediation."

In general, organizations assisting migrant workers to resolve claims in this way first obtain the details of the case, and then help the worker gather documentary evidence. The organization would then telephone the other party to present the claim, or arrange a meeting between the parties.

The practice of mediating disputes was controversial among those interviewed for this study. Some, including other civil society organizations and government representatives, believed that mediation undermines accountability because it redirects claims away from DoFE and the tribunal. PNCC, for example, stated: "If they want to settle the case outside DoFE, we do not entertain such cases."<sup>339</sup> A Women's Rehabilitation Center (WOREC) representative also said that WOREC did not mediate cases outside of DoFE process, although she later admitted that if cases were "less complex in nature," she would call the recruitment agency directly and arrange a "simple mediation."<sup>340</sup> People Forum, a legal NGO that provides free legal aid to migrant workers, has been the most vocal opponent to informal mediation, and told the research team:

Mediation is a wrong concept. Foreign employment cases are state criminal cases. Yes, the victim and perpetrator may be able to settle the issue through mediation and receive some compensation, but the crime is not addressed. This has implications for society—if a woman is raped and the rapist is set free by paying compensation, he could be a threat to other women too. The law says we must punish crimes, but mediation means there is a lapse in punishment because the police and judiciary are not involved. This is ethically and conceptually wrong.<sup>341</sup>

Others in the civil society and NGO community believed that informal mediation is more practical for many migrant workers. Most significantly, it is faster than formal mechanisms, providing workers with immediate redress if successful. It can also be undertaken at the community level if the other party is local, saving migrant workers the expense and inconvenience of traveling to DoFE in Kathmandu. Further, mediation is less confrontational than reporting a person to DoFE. According to some civil society organizations, migrant workers are often reluctant to report their cases to DoFE or the police because the agent is a member of their family.<sup>342</sup> As Pourakhi, an NGO that works mainly with migrant women, explained:<sup>343</sup>

Most migrants do not want their cases to be filed at DoFE or any legal institution. Most of them want to solve their problems through negotiation. This is primarily because of the fear that [filing a case] could create problems in their social relationships as most of the agents or members of the recruitment agencies are [part of their close social circle].

Pourakhi and Pro-Public<sup>344</sup> also noted that migrant workers see the recruitment agencies as politically powerful, and so were reluctant to file a case against them, believing they had no chance of winning.<sup>345</sup> GEFONT, a trade union, explained that most migrants needed payment quickly so they could repay their loan, and were unwilling to file a case at DoFE that could take several months.<sup>346</sup> WOREC in Dhanusha also noted that many migrant workers did not have sufficient evidence to file a claim at DoFE and so mediation was their only real option.<sup>347</sup>

Organizations that mediated cases indicated they would offer to refer cases to the authorities if no solution emerged from mediation. Both Pourakhi and Pro-Public said that their staff would assist migrant workers to file a claim with the police or to go to DoFE if mediation was unsuccessful.<sup>348</sup> Pro-Public in Dhanusha District, which receives 50–60 migrant worker cases per year, said, however, that it had not yet referred any cases to its central office in Kathmandu. Instead it referred them to local police, who would also assist to mediate the case.

As well as being more convenient, civil society organizations that mediate cases believed that mediation often provides better outcomes than DoFE could achieve, because the recruitment agencies wish to avoid a claim being filed against them and will pay what is owed. Pourakhi cited a recent case of 15 returned migrant workers from Malaysia for whom it managed to negotiate a settlement with the recruitment agency, which it believed was better than what could have been achieved at DoFE. However, this does not apply equally to disputes with agents, where the closeness of the relationships may be a barrier.

Migrant workers in this study did not mention contacting a civil society organization, nor did they seem to know about the services civil society organizations offer, suggesting that the ability to seek assistance from a civil society organization may depend on the migrant worker's location, social circle and the reach of organizations, which often does not extend to remote districts or small communities.

One migrant worker participant in this study undertook mediation through a service provided by the local government VDC rather than a civil society organization.<sup>349</sup> The worker had paid NPR 90,000 to go abroad where he was mistreated, and upon returning to Nepal, he approached the agent and managed to get NPR 30,000 of his fees returned to him. However, because the agent refused to pay him the remaining sum, he approached the VDC mediation center where his cousin was working. Eventually, not wanting to cause strain in local relations, the worker accepted a settlement of just NPR 8,000 of the remaining amount he was owed.<sup>350</sup>



While only one migrant worker had used local government to seek redress, this avenue is gaining increased attention. One report submitted to three government ministries addressing governance and safety of migrants, suggested that legal bodies should be established at local (district, VDC, and municipality) levels.<sup>351</sup> Similarly, the MoLE and HELVETAS Nepal have jointly initiated a Safer Migration Project, which aims to serve migrants and their families through local mechanisms, including by providing legal and paralegal advice—namely a referral service to People Forum in Kathmandu, in operation since 2011.<sup>352</sup>

In sum, the practices of civil society organizations are non-standardized and are carried out on an ad hoc basis by each organization. Without records of these mediations, it is difficult to assess whether they are providing workers with the redress to which they are entitled, and/or whether they are in fact providing redress to workers who would otherwise not receive anything. How mediation works in practice, the experiences of migrant workers using mediation services, and whether it could and should be a recognized alternative to more formal methods, deserves further research.

## 8.7 Summary of Pathways to Access Justice for Nepali Migrant Workers

Nepal's foreign employment laws provide workers with rights against individual agents and recruitment agencies. There remains, however, significant room for improvement in the structure and operation of the institutions created to assist migrant workers to access justice and hold responsible actors to account.

The Government of Nepal has created specialized mechanisms for enabling migrant workers to access justice. These include investigations by the Department of Foreign Employment in lieu of the police, adjudication of certain cases by DoFE, and of other cases by the Foreign Employment Tribunal. In many respects, this system is more accessible than the regular court system, which is costly to access and plagued by case backlogs, among other problems. However, unfortunately DoFE's capacity is inadequate to effectively investigate and resolve its caseload—in terms of both staffing levels and training and expertise. This is aggravated by inefficiencies (for example, the significant backlog of cases waiting to be filed at the tribunal) and vague procedures, for example regarding appeals. Compensation that is awarded may be incomplete, and is often received after significant delay, if at all. These factors may explain the relatively small number of migrant workers using these mechanisms.

Some workers and their families are accessing compensation for death and severely disabling injuries that occur abroad, either through private insurance and/

or the FEPB-administered welfare fund, (accessible only to regular workers). For other harms that occur in destination countries, embassies are not yet providing adequate information and support services. Most workers who have grievances against their employers come home because they cannot afford to stay in the destination country and fight their case. As a result, for the significant majority of workers who are underpaid or made to work under different or exploitative conditions, redress remains elusive both at home and abroad and responsible parties are not held to account.

Civil society activism on migrant worker issues is still relatively new, and while organizations have made significant contributions in other areas, their ability to assist migrant workers to access justice remains limited overall. This is worsened by disagreement among civil society organizations on the nature of support that they should or should not be providing to migrant workers especially regarding use of the existing government mechanism as compared to private negotiated settlements.

More detail on cross-cutting obstacles that affect all of the pathways and mechanisms above is included in the next chapter.



## 9. Obstacles to Accessing Justice

Nepal has made considerable efforts to introduce laws, policies, and institutional mechanisms to secure the rights and welfare of its citizens engaging in foreign employment. Earlier chapters of this report have highlighted shortcomings in the design and operation of these frameworks, including in the operation of each redress mechanism. This chapter will discuss some of the major obstacles common to all of the redress mechanisms that prevent workers from accessing justice and obtaining a remedy for harms they experience in the course of migration.

### 9.1 Lack of Awareness of Rights and Redress Mechanisms

One of the most common challenges raised by migrant workers was that they did not know about either their rights under Nepali law, or the mechanisms established and services available to enforce their rights and provide redress when those rights were violated. While most workers knew about their right to be paid what was promised, in other cases migrant workers were not aware that what they had experienced—such as overcharging of fees, or confiscation of personal documents by employers—was a violation of the law.

Further, few migrant worker participants had obtained the information they needed to seek redress either before departure or after return. More than a third (13 of 31 interviewees) said they were not informed by any source before departure or while abroad about where to go if they encountered a problem. As a result, a number of migrants said they did not contact the embassy abroad or DoFE in Nepal because they were unaware that those institutions existed or that they could help migrant workers in their situation.

Participants of two focus groups explained that in the destination countries migrants knew only to contact their agent in Nepal if there was a problem, and that if one had a good agent, the worker would be able to leave a bad job and return to Nepal more quickly (although they also agreed that this rarely happens). None of the 27 migrant workers said that they knew about options for redress in Nepal after they returned. This was given as the main reason that they took no action in Nepal to hold their agents or recruitment agencies accountable.

### **Pre-Departure Orientation**

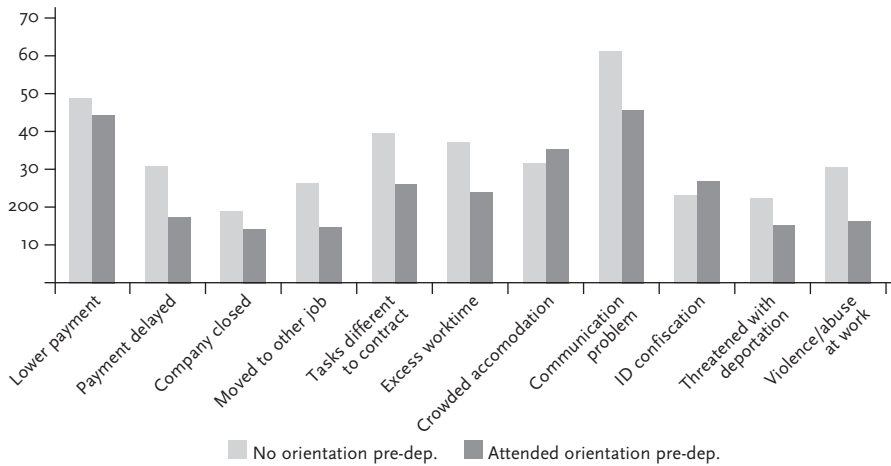
This lack of knowledge about rights and options may be partly attributable to failures in pre-departure orientation and information services for migrant workers and in particular the pre-departure orientation program. The two-day orientation training, conducted by private training centers licensed by DoFE, is required by law for all new migrant workers before departure (see Section 5.1—Key Actors in Nepal’s Foreign Employment Sector). Although the training is relatively brief, the state-mandated curriculum includes a small component on rights.<sup>353</sup> The MoLE, DoFE, and FEPB jointly-issued manual for the orientation training allocates one hour to discussing “Behavior, Rights and Responsibilities.”<sup>354</sup> The manual specifies 35 rights under international law held by migrant workers, but notably does not review rights under contract or Nepali law. It also provides workers with information on organizations that can provide the workers with assistance if they experience problems, including government agencies in Nepal, civil society organizations, recruitment agencies, trade unions in Nepal and abroad, the Nepali embassy and Nepali welfare organizations and societies.

The orientation also includes a section on the foreign employment legal framework in Nepal, and states that workers must be informed that they are entitled to the return of their recruitment fees plus an additional amount if they are not sent abroad in the time promised. The manual says other rights under the law should be discussed, but this is not mandated.

Whether all of the training centers provide the entire curriculum is unclear as oversight is weak. Nevertheless, the orientation does appear to have some impact if the worker attends. Figure 7 provides a summary of the percentage of Nepali migrant workers who face various problems in the Middle East, disaggregated between those who

had attended the government mandated pre-departure orientation training and those who had not, demonstrating fewer reports of problems across almost all categories for those who attended the orientation.

**FIGURE 7: Problems During Migration and Attendance at Pre-Departure Orientation**



Source: Data extracted from World Bank, *Large-Scale Migration and Remittance in Nepal*, 2011: p. 57.

In addition to the orientation, women intending to work as domestic workers must undertake a much more extensive 21-day program based on the “Skill Development Curriculum for Migrant Domestic Workers–2012.”<sup>355</sup> In this training, 12 hours are devoted to safe migration and related information.<sup>356</sup>

The main problem with the orientation program is that evidence suggests few migrant workers actually attend. Of the 27 migrant worker focus group participants in this study, only three reported participating in the orientation training.<sup>357</sup> Most were not even aware of the training requirement, having not been told about it by their individual agents or recruitment agencies. For example, a male returnee from Kathmandu said:<sup>358</sup>

I went to Qatar in October 2011. I had no idea about the orientation training. All of my documents were prepared by the agents. The only thing I knew about Qatar is that it was very strict. I did not know anything except that.

Other workers do not attend the orientation because the cost and inconvenience is prohibitive.<sup>359</sup> All 86 licensed training centers (as of mid-2013) are based in Kathmandu, so migrant workers must pay not only the cost of the orientation (NPR 700)

but also transportation and accommodation in Kathmandu.<sup>360</sup> Other workers provided additional explanations for not attending—for example, one mentioned that she needed to visit relatives at the time the orientation was scheduled.

Even those who do attend the orientation may not understand the content as it is only provided in Nepali, not in any of the many regional languages used in Nepal. One of the three migrant workers who attended, for example, was from Dhanusha District and spoke Maithili so was not able to follow the material.

As safe migration initiatives are gathering increased attention in Nepal, a number of other sources of information have been established for migrant workers. For example, the Government of Nepal, in association with the International Organization for Migration (IOM), established a migrant resource center on the FEPB premises in Kathmandu in 2010. Female migrants are incentivized to visit the resource center through the refunding (by the FEPB) of the NPR 700 fee paid for orientation training.<sup>361</sup> Outside Kathmandu, several Nepali organizations have created networks or information centers for intending or returned migrant workers with international support. Some are public-private partnerships with local government and some are operated exclusively by the civil society organization.

Some also have training to refer migrants to services in Kathmandu.<sup>362</sup> The radio station Ujjyalo 90 FM Network also runs a weekly program, *Desh Pardesh Radio Karyakram*, which disseminates information on various issues pertaining to the migration process.<sup>363</sup>

These new services are a valuable and important development, but it is too early to assess their impact on migrant workers' understanding of migration, or the steps to reduce vulnerability to harm. It is also unclear the extent to which these services will provide advice to workers about their legal rights and redress options, including the DoFE and tribunal claims processes, beyond what is provided in the orientation. Evaluations of these programs would be valuable.

## 9.2 Centralization of Redress Mechanisms in Kathmandu

The location of all formal Nepali dispute resolution services in Kathmandu presents a significant, and often insurmountable, barrier for many migrant workers. DoFE has its offices in Kathmandu and does not have branch offices or representation at the regional or district level. Similarly, the Foreign Employment Tribunal is based in Kathmandu, and although it has authority to sit in different parts of the country, at the time of writing, it had not done so.<sup>364</sup>

Centralization of redress mechanisms is compounded by centralization of pre-departure training. As noted above, this results in many workers outside the capital not attending the training and being unaware of dispute resolution mechanisms in Kathmandu. Instead, those workers rely on local police or, where available, *panchayats*. These institutions may or may not know to refer the worker to DoFE in Kathmandu.

For workers outside the capital who are aware of the DoFE mechanism, the time and expense needed to travel to Kathmandu is often prohibitive. As one civil society organization, AHRCDF noted:<sup>365</sup>

If a man from Baitadi wants to fight a case for a compensation of NPR 80,000, how can he eat and live if he has to spend NPR [20,000] just coming to Kathmandu and returning back home? Who's going to think about these issues?

In fact, among civil society representatives interviewed for this study, the centralization of redress mechanisms was consistently cited as the most significant obstacle to migrant workers seeking redress, and the issue most regularly cited as in urgent need of reform. One lawyer noted that legal aid services were also concentrated in Kathmandu, and that it was therefore very difficult for migrant workers to get accurate information about their rights and options unless they came to the capital.<sup>366</sup> Expansion of legal aid services was recommended.

### 9.3 Lack of Documentation to Support Claims

The law does not specify the documents or other evidence required to bring a case at DoFE or the tribunal. Lawyers and DoFE officials explained that evidentiary requirements are flexible, and that DoFE requires only, at a minimum, the name of the recruitment agency or agent, and ideally a receipt for money paid.<sup>367</sup>

Migrant worker participants in this study frequently did not have these few key documents, or the documents they had were incorrect. For example, only 17 of the 54 workers mentioned receiving an employment contract (see Chapter 6—Harms) and none mentioned receiving a contract between the worker and the recruitment agency with the contact details of the agency included. The fact that very few workers receive their contracts at the recruitment agency office, but rather receive them at the airport or in their accommodation, is a further barrier to the worker being able to identify the recruitment agency used.

Further, receipts for recruitment fees, if given to workers at all, frequently understated the actual amounts paid so that the worker could not support a case for overcharg-



ing. Recruitment agencies' failure to provide workers with these documents violates the FEA 2007. In addition to undermining workers' ability to provide evidence to support a claim, the failure to provide accurate contracts contributes to workers' lack of awareness of their rights and the responsibilities of employers and recruitment agencies, which may give rise to a legal claim if they are breached.

## 9.4 The Pervasive Unregulated System of Individual Agents

The use of individual agents is an entrenched practice in Nepal (see Section 5.1—Key Actors in Nepal's Foreign Employment Sector). Although individual agents can facilitate migrant workers finding work and benefit recruitment agencies by vetting and controlling migrant workers, they are the cause of many harms to migrant workers (see Section 5.3—The Migration Process for Most Migrant Workers). In addition, agents, and particularly unregistered agents, create numerous obstacles to migrant workers obtaining justice for harms in Nepal or abroad.

The first set of obstacles relate to accessing redress for harms perpetrated by individual agents, including common incidences of taking money for the promise of work and disappearing, fraud, and misrepresentation of positions abroad. As individual operators, individual agents have fewer resources than recruitment agencies and so usually find it difficult to repay migrant workers their recruitment fees in the event the agents admit wrongdoing or are ordered by the tribunal to compensate a worker. As unregistered individual agents, they do not pay a deposit to the government, so there is no other source of funds available from which to compensate workers. In several cases described by migrant workers, the worker felt reluctant to demand compensation from agents they knew did not have many resources, or community members spoke up in the agent's defense. Some migrant workers did not want to strain community relationships by making demands on agents who were members of their communities.

Individual agents can also disappear, and numerous migrant workers spoke of extensive efforts to find their individual agent after their return, often to no avail. For example, the six migrant workers interviewed for this study who took their cases to DoFE all reported that the police (or they themselves if they had not yet reported their cases) had difficulty locating the individual agent which prevented the case from moving forward. In several cases, it was believed that the concerned agent had fled to India.

Recruitment agencies can also be shielded from responsibility by using individual agents to handle all interactions with migrant workers. Some workers may never know which recruitment agency is sending them abroad, and may be unable to name the

agency in a compensation claim. Even if they are aware of the recruitment agency, agencies commonly blame agents for any excessive charges or false promises made to the worker. In some instances workers may feel that the individual agent is more directly responsible because they were in a position of trust and therefore decide not to pursue the agency for redress.

The DoFE case files reviewed as part of this study revealed that indeed most cases were brought against individual agents, not recruitment agencies, despite the likely involvement of a recruitment agency in at least some of those cases. The authors also reviewed two case files in detail in which individual agents named the recruitment agencies involved in sending the worker abroad but the recruitment agencies denied the relationship. In those cases, DoFE could not, or chose not, to investigate further but instead settled only on prosecuting the individual agent. A lawyer interviewed for this study stated that this was standard practice by recruitment agencies, and also worked the other way—namely where recruitment agencies were named as defendants, an unregistered individual agent would invariably be involved but would deny such involvement.<sup>368</sup>

## 9.5 Threats or Fear of Retaliation

A handful of migrant workers interviewed for this study stated that they experienced threats or were afraid of retaliation from recruitment agencies or individual agents if they filed a case or pushed for more compensation than what was offered. One migrant worker who had been defrauded of his recruitment fees by an agent recounted that the agent called him and his wife a number of times threatening to kill them if they took the case to the police, but each time from a different number. In that case, the migrant worker succeeded in having the agent arrested but he was not prosecuted for making threats.<sup>369</sup>

The special government attorney believed that threats were a serious obstacle to migrant workers taking their cases to the tribunal. He noted that as soon as the case was registered, many migrant workers would be threatened (he did not specify whether from the agent or the recruitment agency), and would be approached by the other party outside of the courtroom and pressured to accept a settlement. As a result, those workers would change their stories and lie on the witness stand.<sup>370</sup>

## 9.6 Insufficient Resources and Training for Government Agencies Assisting Migrant Workers

A common theme throughout interviews with officials in Nepal was that the principal institutions charged with assisting migrant workers were deeply underfunded and under-resourced. In addition, specialized training was rare, and personnel changed on a regular basis so it was difficult for officials with responsibility for foreign employment to develop expertise and build institutional memory.

DoFE clearly has insufficient staff to carry out its duties in a timely and effective manner. This includes investigating claims, determining those within its jurisdiction, and filing other categories of cases before the tribunal (see Section 8.1-DoFE). In its Complaints Registration and Investigation Section DoFE has capacity for three officers tasked with handling the several thousand cases reported by migrant workers each year. However, in March 2014, it had only one investigation officer and one director of the legal department on staff, both seconded from other ministries.<sup>371</sup> A DoFE staff member described the department's situation as a "resource crunch" that gave officers little time to focus on each case. It is unsurprising that investigations are generally superficial, that anomalies arise in the determination of claims, and that few cases are registered at the tribunal. The strain on the case-handling resources of DoFE and the tribunal is exacerbated by the number of non-foreign-employment-related cases that make it to the tribunal (discussed in Section 8.2).

A lack of resources also reportedly limits the extent to which DoFE can effectively monitor and supervise recruitment agencies and individual agents, as well as carry out its other functions. DoFE had, at the time of writing, only 94 staff to handle the almost half a million migrant workers departing each year, as well as to supervise more than 700 recruitment agencies. This is despite an increase in the DoFE budget from NPR 23,085,000 in 2009 to NPR 63,890,000 in 2013—an almost 200 percent increase<sup>372</sup> over a period in which the number of labor permits issued by DoFE increased by 54 percent from 294,094 in fiscal year 2009/2010 to 453,543 in fiscal year 2012/2013.<sup>373</sup>

Experts described similar constraints in embassies seeking to support migrant workers abroad. An official from the Ministry of Foreign Affairs conceded the following challenges to access to embassy services:<sup>374</sup>

The number of staff in the embassies is very small compared to the volume of work. Hence, it is not possible to conduct detailed study and verification of the employers. Moreover, the embassy is located in the capital city whereas workers are spread throughout the country. Now we have six staff in the Saudi embassy. So there have been positive changes to address the problems. However, it is not an easy task to recruit additional staff in the embassy. The

need for fluency in the local language is also a problem and this necessitates local recruitment too.

According to media reports, other embassies in the Gulf have reported severe pressures and an inability to meet the needs of migrant workers in their countries of deployment, leading to budget complaints from the Foreign Ministry.<sup>375</sup> A former ambassador noted that her embassy only had six staff, in addition to a driver and general assistant and that they were so overwhelmed that everyone in the embassy worked on migrant worker cases; even the driver was called on at times to assist with office-related tasks. In addition, the Embassy did not have any lawyers on staff, and only had “a public relations officer, a Sudanese man who we hired locally. He also served as our ‘lawyer.’”<sup>376</sup> She also reported a lack of training on migrant labor issues:

Before taking up the ambassadorial position, I was given a standard 10-day orientation which primarily discussed issues of diplomacy, etiquettes, etc., but nothing on labor migrants. There were four to five people who took the training with me that were going to labor-receiving countries but there was no information about migrant-related issues. I spent the first six months of my tenure just understanding the policies and other issues related to labor.

## 9.7 Corruption or Perceptions of Corruption in Foreign Employment

Weak governance and accountability are a serious challenge across public and private actors in Nepal, and foreign employment is no different.<sup>377</sup> Corruption has been found in the foreign employment private sector (such as through human trafficking, fraud, and falsification of certificates and other documents), in addition to public-private collusion to speed up the migration/recruitment process (including forged work permits and bribery of officials), and purely public-sector-driven activities (such as nepotism and favoritism in the application of foreign employment rules).<sup>378</sup>

A 2010 report commissioned by the World Bank described a system whereby corrupt officials share bribes from the bottom to the top of the administrative hierarchy—with an average bribe rate in the DoFE of NPR 1,000 (US\$ 11).<sup>379</sup> The report estimated the total cost of corruption to Nepal’s foreign employment industry to be over NPR 17.2 billion annually (US\$ 194.7 million), with NPR 7.5 billion (US\$ 84.9 million) from official channels and NPR 9.7 billion (US\$ 109.8 million) from informal/unofficial channels.<sup>380</sup> Corruption has been identified at all stages of the migration process and appears to be systemic.

Corruption has significant consequences for migrant workers' safety and ability to seek redress. For example, DoFE officials have recently been accused of approving migrant workers to travel as individuals, even when they are being placed by a recruitment agency, so that the recruitment agency's name will not appear anywhere on the worker's documents.<sup>381</sup> If the worker encounters problems during the placement abroad, he or she will never be able to prove that the recruitment agency was involved and will be unable to seek compensation from the agency. At least one DoFE investigation officer has been arrested for allegedly accepting a bribe to dismiss a complaint against an individual accused of running an unlicensed recruitment agency. The case was transferred to the courts.<sup>382</sup>

The creation of a labor desk at the Kathmandu Tribhuvan International Airport, though established to examine labor migrants' documents and reduce document fraud, has also increased opportunities for corruption.<sup>383</sup> A study by the National Vigilance Centre in February 2014 found that both labor desk and immigration officials were pocketing up to NPR 2 million per day, usually from female migrant workers travelling with forged passports.<sup>384</sup> One female migrant worker participating in this study reported that she was stopped at the airport because her documents were incomplete, but her agent told her he paid the immigration officer a bribe of NPR 1,500 and she was allowed to board the plane.<sup>385</sup> This meant, however, that her incomplete documents were not reported, and she became an irregular worker both from the perspective of Nepal and the destination country. Later, when she experienced both physical and verbal abuse in the destination country, she was unable to obtain redress abroad for these harms because of her status.

Even if rumors of corruption and nepotism in the foreign employment industry may be unfounded in some cases, they create a perception that the system will not work to the benefit of migrant workers. Although evidence of entrenched relationships has not been published, a number of individuals interviewed in this study expressed a belief that recruitment agencies are politically connected and unreachable, and therefore it is difficult for migrant workers to ever succeed against them. According to one civil society organization, this meant that migrant workers were reluctant to bring cases because they believed they could never win.<sup>386</sup> This included both submitting a complaint to local police, or traveling to Kathmandu and filing a complaint with DoFE. More research on the impact of corruption on perceptions of and access to justice would be valuable.

## 9.8 Socio-Political, Economic and Gender-related Obstacles to Accessing Justice

Many social and regional factors continue to obstruct access to the justice system in Nepal. Due to the predominance of the Hindu caste system,<sup>387</sup> certain groups have been historically marginalized on the basis of caste, ethnicity, and religion, in particular, the Dalits, Janajatis, and Muslims. The impact of this historical exclusion continues to resonate, with these groups continuing to lag behind socially and economically.<sup>388</sup> This, in turn, restricts their ability to access justice due to a lack of financial resources to pursue claims, and/or a lack of awareness of legal rights and redress options. Further, the use of Nepali as the primary and only language of the legal system acts as a major barrier, particularly for the Janajatis for whom Nepali is not their mother tongue.

Similarly, female migrants often face unique challenges in accessing the justice system in general in Nepal, which likely applies equally to the migration context. First, women confront stigmatization and the possibility of being ostracized when they press charges, especially if the case involves issues like sexual abuse and rape.<sup>389</sup> This is exacerbated by the fact that existing laws in Nepal “do not protect the confidentiality of sexual assault victims in police investigations, legal proceedings, and the greater public discourse.”<sup>390</sup> Second, the justice system in the country is overwhelmingly male-dominated, creating the potential for influence of patriarchal norms and an environment that may not be hospitable to female crime victims. As of 2012, there were a total of only 6 female justices and judges in the judicial branch; only 8 percent of all the registered lawyers were women; and only 23 of the 253 section officers in the judicial administration were women.<sup>391</sup>

A further impediment to migrant women’s access to justice is the fact that many women migrate irregularly to circumvent numerous discriminatory restrictions placed on female migrants by the Government of Nepal,<sup>392</sup> an estimated 80 percent of female migrants remain undocumented<sup>393</sup> (see Sections 4.2—Female Migrant Workers and 4.3—Irregular/Illegal Migration). Female workers who migrate via irregular channels confront a host of obstacles to filing a claim before DoFE, because they rarely have sufficient evidence to support a claim through the regular process (see Section 8.1—Department of Foreign Employment Complaints and Investigation Section).

These obstacles are amplified for many by the centralization of the foreign employment redress mechanisms in Kathmandu.<sup>394</sup> For the poor and socially marginalized, seeking justice is a luxury they are unable to afford.



# 10. Conclusion, Findings and Recommendations

## 10.1 Conclusion

Nepal's migrant workers play a vital role in the country's economy and development, with remittances accounting for nearly 25 percent of the country's GDP. It is estimated that nearly half of all Nepali households have at least one member who is working or has worked outside Nepal. Despite this population's economic and social contributions, pre-departure harms are routinely perpetrated against migrant workers by recruitment agencies, individual agents, and others. These include fraud, misrepresentation and even extortion. The government of Nepal has significantly strengthened the labor migration framework with the introduction of the Foreign Employment Act 2007 and Foreign Employment Rules 2008, as well as the Foreign Employment Policy in 2012. Yet it has not taken sufficient steps to prevent common harms, or to ensure adequate redress and accountability when they occur. Access to justice remains elusive for the overwhelming majority of migrant workers in Nepal.

This study identifies a set of critical gaps in the design and operation of the labor migration framework that contribute to the current lack of meaningful access to justice for Nepali migrant workers. Although the legislation is relatively robust, reform is needed in several key areas to: provide rights protections for migrant workers; to clarify



the relationship between mechanisms and potentially modify their jurisdiction and procedures; and, to strengthen oversight of recruitment and improve accountability of recruitment agencies and individual agents.

Beyond legislative change, significant human and financial resources are needed to achieve the effective operation, and necessary expansion, of the key redress mechanisms. Greater political will is needed to implement and enforce existing or revised legislation and to support Nepali workers throughout all stages of the migration process. The government must develop more systematic and transparent procedures in order to better fulfill its mandate to oversee and hold accountable all stakeholders in the private recruitment industry. And workers must be given the information and support needed to enforce their rights and access remedies for harms. All of this begins with the recognition, by the government and all other stakeholders in the system of foreign employment, of prospective, current, and former migrant workers as rights-holders whose protection is core to Nepal's long-term development.

## 10.2 Findings

### Governance and Oversight of Labor Migration and Access to Justice

1. **Nepali migrant workers experience a range of rights violations at the hands of private actors from the moment of recruitment through to their return home. Many violations are inter-related and interdependent in a manner that the current legal framework fails to adequately address.**

Labor migration is facilitated almost exclusively by private actors whom the government is tasked with overseeing. These private actors, including recruitment agencies, individual agents, manpower agencies in destination countries, and employers, are responsible for most harms that workers experience in the course of migrating for work.

Certain pre-departure harms increase the likelihood that migrant workers will experience other harms before departure and while abroad, and impede migrant workers' access to justice upon return. These include: the charging of excessive recruitment fees which put migrant workers in significant debt, misrepresenting the terms and conditions of migration and of employment leading to the employer not abiding by promised conditions, delaying or even cancelling departure, fraud, and failure to provide workers with correct pre-departure documents, including a receipt for actual fees paid and contracts of employment and recruitment.

2. **The existing legal framework governing labor migration treats migrant workers as subjects rather than rights-holders. This undermines workers' ability to enforce their rights and access justice when harms are perpetrated against them.**

The Foreign Employment Act 2007 (FEA 2007), the primary statute governing labor migration, places numerous obligations on private actors in the foreign employment industry, and provides for fines and, in some cases, imprisonment when those obligations are not fulfilled. It also establishes mechanisms for oversight and compensation.

However, the act and rules are devoid of rights language and many obligations set forth in the act do not have a corresponding right. Further, procedures for obtaining redress when obligations are left unfulfilled are unclear. For example, although recruitment agencies are obligated to provide a contract, the law does not articulate any means by which workers may enforce their right to a contract, or obtain a remedy when it is not provided. Similarly, the law does not set out a procedure to compel the government to fulfill its obligations under the act. Further, the legislation does not establish a general right to redress in the event that a worker's statutory or contractual rights are violated.

The act also does not reference Nepal's obligations to migrant workers under the human rights treaties to which Nepal is a party (see Annex 3 for a list of these treaties) although, pursuant to The Treaty Act of Nepal, they are already a part of the domestic legal framework. Of particular concern, the law does not take affirmative measures to protect and fulfill the rights of vulnerable groups such as women migrating into domestic work as is required under CEDAW.

3. **The Foreign Employment Act does not adequately regulate the recruitment industry.**

- a. *The Foreign Employment Act does not effectively ensure accountability on the part of recruitment agencies and individual agents.*

FEA 2007 imposes significant obligations on recruitment agencies, along with fines and criminal punishment for non-compliance. However, penalties for the most common violations committed by recruitment agencies are relatively low and the act allows more common offenses to be resolved administratively by DoFE.

In addition, recruitment agencies are often able to shield themselves from liability in both law and practice, by using unregistered individual agents. Although the act requires all foreign employment businesses to be licensed

and prohibits the use of unregistered individual agents, it does not penalize recruitment agencies for using unregistered agents. As a result, efforts to register agents with recruitment agencies have largely failed, and recruitment agencies are rarely held accountable for the actions of agents on whom they rely.

Finally, oversight provisions in the FEA 2007 and Rules 2008 are vague, allowing recruitment agencies to operate without great scrutiny. Pre-departure checks are few and not comprehensive. For example, neither the act nor the rules require government oversight of contracts being given to or signed by workers, or of workers' participation in the mandated pre-departure training. As a result, these steps appear to be frequently bypassed.

- b. *Contractual obligations and rights under the Foreign Employment Act are vague and ambiguous, and are unenforced by DoFE*

Written contract(s) are essential for migrant workers to access justice. They define the terms and conditions of foreign employment; identify the parties to the agreement and the responsibilities of each party; and form the basis on which the worker can pursue redress if the agreement is violated. Although FEA 2007 addresses contractual requirements, the provisions are ambiguous, compliance by recruitment agencies is poor, and government oversight is weak.

The obligations to provide contracts under FEA 2007 are unclear in three respects:

- The number of contracts: Though certain provisions specify two contracts (one between the worker and the recruitment agency, another between the worker and the employer), other sections refer to “the contract” in the singular.
- Parties to the contract or contracts: The required parties to each agreement are unclear, making it more difficult for a worker to identify the parties against whom he or she may pursue a claim. It also creates ambiguity regarding DoFE’s enforcement obligations and the contractual rights of the individual.
- Contract provisions: The act requires only that the most basic terms and conditions, such as remuneration, are included in the contract. It does not specify other key provisions including the location of the employment, the date of commencement, leave, benefits, and dispute resolution.

DoFE pre-approval and pre-departure checks of documents are routinely failing to identify common non-compliance. Indeed, contracts between recruitment agencies and migrant workers appear never to be provided—migrant workers were unaware of their right to such a contract, and recruitment agencies said they were not required.

The FEA 2007 does not penalize recruitment agencies for not providing contracts, or providing inadequate contracts, and does not establish any rights or remedies for migrant workers who do not receive a contract as required. Migrant workers who complain to DoFE and demand a contract are likely to see the promised job evaporate or risk being blacklisted for future employment by the recruitment agency involved.

**4. The existing domestic legal regime fails to account for cases of serious harm and exploitation, debt bondage, and physical or emotional abuse in the course of migrating for work.**

The FEA 2007 allows workers to claim compensation if the terms and conditions of employment are different from those promised in Nepal. However such claims are in practice targeted at differences in salary and benefits. If they involve recruitment agencies they are treated as low-level complaints resolvable by DoFE and are not heard by the Foreign Employment Tribunal (the tribunal). The law does not address compensation claims for more serious abuse and exploitation at the hands of agents, recruitment agencies or employer institutions.

The Human Trafficking and Transportation (Control) Act (HTTCA) arguably covers cases of severe labor exploitation and abuse. However, the HTTCA is written and has been interpreted to primarily tackle trafficking of women and girls into the sex industry, and few cases of migrant workers exploited by employers abroad have been prosecuted under the HTTCA. Furthermore, although the HTTCA arguably covers a broader scope of worker exploitation, because of its association with sexual exploitation significant stigma is associated with HTTCA cases, which discourages workers from bringing claims.

**5. The rights of migrant workers in an irregular status and female migrant workers are inadequately protected.**

The FEA 2007 is silent on the rights of workers who have engaged in foreign employment outside of formal channels and are in an irregular status. In theory, migrant workers who depart Nepal irregularly should have equal access to all

redress mechanisms apart from the Foreign Employment Welfare Fund. In practice, such workers usually find themselves unable to access justice because they lack documentary evidence such as receipts and contracts to support their claims. The law does not provide any remedy for workers who unwittingly depart Nepal in an irregular status because of the actions of their recruitment agency and/or individual agents.

Women make up a very small percentage of the total number of Nepal's regular migrant workers, although it is believed many women travel irregularly in defiance of restrictions on women under 30 travelling to the Gulf as domestic workers. As a result, women have been largely invisible in public discussions on foreign employment, even though women appear to suffer more frequent and severe harms abroad than their male counterparts.

Nepal has taken some steps to protect women migrant workers such as including a non-discrimination provision under the FEA 2007, and reimbursing the cost of pre-departure orientations for women. At the same time, the act allows employer institutions to make gender-specific demands in the recruitment and selection of workers. Furthermore, Nepal's restriction of certain female migration clearly discriminates based on gender, and ultimately pushes young women into more risky forms of migration, such as traveling through third countries, or traveling on false documents. This compounds their vulnerability and limits their ability to access justice when their rights are violated.

Neither the act nor the Rules 2008 contain provisions that address the unique situation of women seeking and engaging in foreign employment. Nor do they address the particular needs of returning women migrant workers, such as maternal and child health services or counseling for women migrant workers who have been abused, or practical differential needs of women seeking to make compensation claims and access justice. CEDAW guidelines in General Recommendation 26 on women migrant workers are not clearly reflected in the Act.

## **Operation and Effectiveness of Redress Mechanisms**

- 6. Nepal has created specialized mechanisms for investigating and adjudicating migrant worker claims against recruitment companies and individual agents. Limited integration and information-sharing between mechanisms frustrates access to justice.**

Nepal has created a number of specialized formal mechanisms for resolving complaints by migrant workers against recruitment agencies and individual agents,

and providing redress in certain cases. These consist of a Complaints Receiving and Investigations Section at DoFE, a specialized Foreign Employment Tribunal, and a welfare fund in cases of death or mutilation of workers abroad. In addition, workers in some circumstances can use existing justice mechanisms such as the police and courts in Nepal and abroad. A number of migrant workers also reported using local traditional dispute resolution through the *local panchayats* or mediation through VDCs, or support from civil society organizations, though these are not recognized under FEA 2007. The relationship between the formal mechanisms and different categories of claims is set out in the table below.

How these mechanisms work together remains unclear in law and practice. For example police appear to commonly receive complaints at the local level, but the law restricts their role and there are no provisions for police to refer a case to DoFE. Similarly, coordination of case-handling between individual embassies and the Ministry of Foreign Affairs in Kathmandu, and between labor attachés and DoFE and the FEPB appears to be minimal.

Case Type	Mechanism	Location
Theft of recruitment fees, fraud regarding terms and conditions of work, and other violations by agents and recruitment agencies under the Foreign Employment Act 2007	DoFE Complaints Receiving and Investigations Section, and the Foreign Employment Tribunal	Kathmandu
Labor complaints that arise in the countries of work	Overseas labor tribunals and courts. Embassies may provide limited assistance	Capital cities of destination countries
Death or mutilation occurring abroad	The private insurance system and/or the Foreign Employment Welfare Fund	Kathmandu
Human trafficking, particularly for sexual exploitation, and crimes under the General Code	Police and district courts	District capitals
Local disputes with individual agents	Police, local mediation or dispute resolution services	Dependent on services available in locality

Findings specific to each mechanism are outlined in Finding 8 below.

7. **Across all formal redress mechanisms a common set of barriers prevents migrant workers from accessing justice.**

- a. *The redress mechanisms in Nepal fail to account for the socio-economic realities of persons migrating to the Middle East for work.*

The population traveling to work abroad, and particularly traveling to the Gulf, is diverse. It comprises educated and comparatively wealthy individuals, as well as those from the poorest and most marginalized sectors of society. Workers come from different parts of the country, and speak a range of languages. Women and men travel abroad, and do so through both regular and irregular channels.

Despite this diversity, protection and redress mechanisms are targeted mainly to those migrants who speak and read Nepali and are regular – automatically excluding many female migrant workers. Pre-departure training is provided only in Nepali. Similarly, DoFE and the tribunal do not provide translation or other explanatory services for migrants submitting complaints.

- b. *Centralization of mechanisms in Kathmandu*

The redress mechanisms that specialize in foreign employment and the agencies that administer them are located in Kathmandu (as a matter of practice rather than law). For example, all licensed recruitment agencies, as well as DoFE, the Foreign Employment Tribunal, the Foreign Employment Welfare Fund, and the private insurers are located in Kathmandu. Centralization, and the associated distance of many workers from redress mechanisms, creates significant barriers to access for Nepali labor migrants, including time, travel expenses, and awareness. The law does not require recruitment agencies to reimburse expenses if it loses the case.

- c. *Lack of knowledge of legal rights and redress mechanisms on the part of workers and their families.*

Awareness of legal rights and redress mechanisms among migrant workers is very low, particularly among women. This is partly because few workers attend the mandatory pre-departure orientation. For those who do attend, the training contains limited information regarding legal rights and options for obtaining redress and compensation for harms. Other services to provide migrant workers with information are just commencing in certain parts of the country and their impact on access to justice has not been assessed.

d. *Lack of adequate resources on the part of government agencies*

The government has devoted insufficient human and financial resources to responsible departments for them to effectively carry out their mandate under the FEA 2007. Although Nepal ranks among the poorest nations of the world and is still transitioning from conflict, resources are available that could be deployed to strengthen the foreign employment system. The Foreign Employment Welfare Fund, for example, was reported to hold NPR 2.14 billion, as of March 2014, but has spent very little of that money and has yet to implement the variety of pre-departure and reintegration programs contemplated. Furthermore, with remittances accounting for nearly 25 percent of the country's GDP, Nepal is profiting significantly from the contributions of its citizens engaging in foreign employment. At present, the under-staffing of the DoFE Complaints Receiving and Investigations Section and many foreign embassies make adequate handling of all cases practically impossible.

e. *Lack of evidence to support complaints*

Migrant workers frequently do not have the necessary evidentiary documents to bring claims through formal redress mechanisms due to failures on the part of recruitment agencies to provide workers with required documents, and oversight failures by government. Many migrant workers also have their documents confiscated by employers abroad, and are not able to recover them if they leave in distress. Although recruitment agencies may in some cases provide workers with replacement documents they are not required to do so.

f. *Threats and fear of retaliation*

Workers often fear pursuing claims against recruitment agencies or their agents because of threats ranging from cancelling of the job offer to physical violence. FEA Act 2007 and Rules 2008 do not contain anti-retaliation provisions, and do not offer protection to workers who pursue claims before DoFE or the tribunal. The HTTCA includes a victim's right to confidentiality and provision for the prosecution to proceed on the court-certified statement of the victim, but no similar protections exist for victims under FEA 2007.

g. *Weak Governance and Accountability*

Corruption persists within Nepal's civil service, including reportedly within DoFE. Alleged corruption in foreign employment includes collusion with recruitment agencies to avoid oversight and enforcement of the law and the payment of bribes by recruitment agencies to achieve certain outcomes. Whether corruption is real or perceived, it dissuades migrant workers' from



testifying against recruitment agencies at the tribunal, and may impact outcomes of migrant worker cases.

**8. Each mechanism has the potential to provide migrant workers with access to justice, but for structural and operational reasons most are failing to do so.**

*a. DoFE Complaints Receiving and Investigations Section*

DoFE has a broad mandate to provide migrant workers with remedies and hold recruitment agencies accountable for common worker harms. It has significant investigative powers, as well as powers to award compensation to workers and to sanction recruitment agencies for offenses under the FEA 2007. Due to implementation failures, the promise of DoFE's mandate has remained unfulfilled. In addition to the common challenges, such as resources, noted above, this study found that:

- i. Investigations of migrant worker complaints are superficial, rarely if ever going beyond the documents supplied by the parties, or joining additional potential defendants.
- ii. Investigation, case-handling, and decision-making functions are non-transparent. Although DoFE has an internal directive, it lacks detail and does not clearly articulate the department's claims-handling role or the rights and responsibilities of victim and defendant, or create a standard procedure. Gaps are evident across several areas:
  1. Investigation and decision-making powers are exercised in an ad hoc manner. Officers appear to shift between the roles of a mediator and that of a decision-maker able to impose its finding on the parties.
  2. Standardized record-keeping and case management systems are lacking.
  3. The rights and responsibilities of the parties before DoFE are inconsistently applied. For example, parties' rights to documents submitted by the opposing party, and to legal aid are not regularly implemented.
  4. Compensation criteria are vague under the law and the DoFE Directive, particularly for losses other than non-payment of wages.<sup>395</sup> Furthermore, poor record-keeping limits the ability to identify trends and improve consistency.
  5. DoFE decisions are not recorded or published in any systematic fashion, and reasons for decisions are not provided to the parties.

6. Procedures or criteria for filing or determining an appeal from a DoFE decision “with the government of Nepal” are not specified. It is unclear whether migrant workers ever use the appeal mechanism.
- iii. DoFE does not have jurisdiction to make decisions in cases against individual agents, however all cases against agents must first be filed with DoFE. This creates an impediment to efficient adjudication of claims. Specifically:
  1. Very few cases approved by a government attorney for prosecution were actually registered by DoFE with the tribunal.
  2. Cases are often settled with individual agents before they are registered at the tribunal. DoFE’s role in the settlement of those cases remains unclear. It is also unclear if workers are aware of the opportunities to prosecute the agent and agencies, and what that process entails.
  3. Allegations of a high proportion of fraudulent claims against individual agents in the tribunal suggest that DoFE’s investigation process is not acting as an effective filter for unmeritorious and fraudulent claims.

b. *Foreign Employment Tribunal*

The tribunal is perceived to be faster and more efficient than Nepali courts. However, few cases have been prosecuted compared to the number of cases eligible (see above). The following factors reduce the effectiveness of the tribunal:

- i. The court is located in Kathmandu, and although it may locate itself in other districts it has not chosen to do so;
- ii. Victims of crime have little role in the proceedings aside from testifying (as is common across the criminal justice system);
- iii. The tribunal does not have an effective case management system for tracking the progress of cases;
- iv. Decisions of the tribunal are not published;
- v. The tribunal does not have the power to enforce its decisions, resulting in increased burdens and delays for migrant workers to obtain compensation;
- vi. A large number of tribunal cases (up to 50 percent, according to some sources) are found to be non-foreign employment related, because DoFE

is failing to filter out fraudulent cases and/or migrant workers are being coerced by defendants to change their testimony before the tribunal.

c. *Embassies*

Nepal has taken steps to strengthen embassy assistance to its migrant workers, including appointing labor attachés in some major destination states. Embassies are often the only support mechanism of which workers are aware and are providing essential assistance to migrant workers in distress. Nevertheless, they not adequately support migrant workers to access justice in destination countries for the following reasons:

- i. Embassy staff have inadequate resources, training, and influence to genuinely assist workers when their rights are violated.
- ii. Embassies have not been given clear guidelines for assisting migrant workers with complaints against parties in the destination country, and therefore the level of assistance varies between embassies.
- iii. Embassy assistance focuses on returning migrant workers to Nepal, including replacing lost documents, and repatriating deceased workers or workers in distress. Legal advice and support to Nepalis whose rights have been violated appears to be minimal in many countries.
- iv. Two Gulf states do not have labor attaches assigned, and Lebanon, which has a significant Nepali migrant worker population, does not have a Nepali embassy presence.

d. *Foreign Employment Welfare Fund and Private Insurance*

The Foreign Employment Welfare Fund (under the FEPB), and private insurance, which provide compensation to workers and their family members in cases of death and mutilation, are perceived to be working relatively effectively, providing compensation quickly and with minimal documentation.

However, awareness of both the fund and insurance was extremely low among migrant workers, and thus it is likely that many valid claims are not being filed. Both are also limited to receiving claims in Kathmandu, presenting a further barrier to access. Irregular workers, who did not pay into the fund, are explicitly denied access to benefits under it. Similarly, few irregular workers buy insurance, and therefore are not covered under the private insurance scheme. The exclusion of irregular workers has a disproportionate impact on female migrant workers.

e. *Informal justice mechanisms*

Despite the existence of formal redress mechanisms through DoFE and the tribunal, most migrant workers outside Kathmandu rely on local services, where available, to resolve disputes, particularly with individual agents. These includes traditional structures like local *panchayats*, as well as civil society organizations or local government which can mediate disputes. Local police also sometimes play a mediating role between workers and individual agents.

The use of informal justice mechanisms is controversial, particularly within civil society. Violations of the FEA 2007 are criminal offenses, and some civil society representatives felt they must be addressed through DoFE to ensure accountability. Others felt mediation to be a more practical alternative. Mediation appeared to provide more timely redress for some migrant workers, but was also subject to influence due to personal relationships between workers and individual agents, or between agents and local power structures. No data is available on the number or outcomes of mediations on which to assess their use and effectiveness.

f. *The Court System*

Nepal's regular system of courts, including district and appeals courts, are primarily available to migrant workers for prosecution of trafficking cases, and cases under the civil code. Although courts are located in each district, they are notoriously backlogged. Legal experts did not perceive them as a positive alternative to the Foreign Employment Tribunal where similar offenses can be prosecuted under the FEA 2007.

g. *National Human Rights Commission and National Women's Commission*

The National Human Rights Commission and the National Women's Commission both have the authority to receive and investigate complaints, but do not have meaningful enforcement powers. The researchers are unaware of any complaints submitted to either commission on behalf of migrant workers. Nevertheless, these institutions may play an important role in definition, oversight and implementation of Nepal's obligations under international human rights law.

## 10.3 Recommendations

### Recommendations to Government

1. **The government of Nepal should recognize migrant workers as rights-holders.**
  - a. The legislature should amend the Foreign Employment Act 2007 to:
    - i. Establish enforceable rights that correspond with the statutory obligations of government and recruitment agencies under the act.
    - ii. Specifically recognize a right to redress if a worker's rights are violated.
    - iii. Incorporate key human rights provisions in the treaties to which Nepal is a party as they relate to labor migration.<sup>396</sup>
  - b. DoFE, the Foreign Employment Tribunal, the Foreign Employment Promotion Board, the police, and the judiciary, should each develop and adopt policies that reflect migrant workers' status as rights-holders in their handling of migrant worker cases.
  - c. The government of Nepal should ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Domestic Worker Convention (189), and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.
  - d. The government should solicit participation from and consult with civil society organizations and unions working with and on behalf of migrant workers regarding how it can better implement Nepal's human rights obligations in its management of the foreign employment industry.
2. **The government of Nepal should strengthen oversight of contracts provided to migrant workers.**
  - a. DoFE should immediately strengthen enforcement of the rules regarding contracts under the FEA 2007 including:
    - i. Verifying that required contracts are signed by workers and are in Nepali.
    - ii. Ensuring a certified copy of both the employment contract and recruitment agency contract are provided by DoFE to workers as required under the act.
  - b. The legislature and DoFE should provide greater clarity regarding the contents of both required contracts. Provisions to consider include the name and address of all parties; the position for which the worker is being recruited or

employed, such as the location, remuneration, and name of the employer; the consequences for breach of contract, including governing law, dispute resolution mechanisms and remedies.

- c. Recruitment contracts should be signed before or at the time a migrant worker pays the bulk of recruitment fees. Employment contracts should be provided at least several days prior to departure.
  - d. To address the common practice of contract substitution, the contract should state that any subsequent employment contract will only be valid if signed in the presence of a Nepali consular official, if the worker fully understands the terms of the new contract, and if the worker enters into the contract freely and without coercion. In the event of a dispute, the onus for proving lack of coercion should rest on the employer and/or recruitment agency.
  - e. Embassies should be required to approve contracts before they are provided to workers, including verifying the existence of the employer institution. Consider also having a DoFE or FEPB officer present during the signing of employment contracts in Nepal, as is done in some other origin countries.
  - f. The legislature should consider amending the FEA 2007 to require one tripartite contract between the employer institution, recruitment agency, and worker, incorporating a provision for joint and several liability between the employer institution and recruitment agency should there be a breach on the part of either party.
  - g. The MoLE should consider developing standard forms of contracts.
  - h. DoFE should ensure that copies of all contracts and other documents submitted for approval are stored in a system that is readily accessible to a migrant worker (and his or her representative).
  - i. The legislature should amend the FEA 2007 to create an offense, sanctions, and a remedy for not providing required contracts, with a parallel right of action for migrant workers to demand provision of contracts from the recruitment agency.
3. **The Government of Nepal should improve transparency and accountability in the regulation of recruitment agencies and individual agents.**
- a. The legislature should:
    - i. Amend the Foreign Employment Act 2007 to include sanctions against recruitment agencies that rely on unregistered agents to supply workers,

and hold recruitment agencies accountable for representations made to workers by those agents regardless of whether there is an official relationship between the agent and recruitment agency.

- ii. Consider allowing agents to register with more than one agency.

b. DoFE and the FEPB should:

- i. Create a more robust licensing system for recruitment agencies that requires prospective directors to demonstrate they were not previously affiliated with an agency that had its license revoked (within a certain period of time), and make a condition of licensing that the agency not have been the subject of repeated migrant worker claims before DoFE.
- ii. Track relationships between overseas manpower agencies, recruitment agencies, and individual agents, and make all such information publicly available on DoFE's website.
- iii. Use legislated "checkpoints" to identify relationships between agents and agencies—e.g., require an agency to specify whether it uses an individual agent when it applies for the labor approval sticker; require a worker to specify whether he or she used an individual agent and the identity of that agent when her documents are checked in the airport pre-departure;
- iv. Establish a more robust inquiry process regarding systemic wrongdoing in the recruitment industry, and transparent (and potentially mandatory) exercise of DoFE's inquiry discretion.
- v. Conduct regular audits of all recruitment agencies, make the findings of those audits public, and develop a rating system for recruitment agencies.

4. **The government should establish enforceable protections and remedies for workers who suffer severe abuse, exploitation, debt bondage or trafficking.**

- a. The legislature should create new offenses under the Foreign Employment Act 2007 that recognize serious harms, impose appropriate penalties on offenders, and provide a complaints process designed to ensure both accountability and just compensation to the individual harmed.
- b. The legislature should amend the HTTCA to clearly prohibit and provide redress for all forms of labor trafficking, consistent with the definition set forth in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

- c. DoFE should:
    - i. Create a protocol with the police to refer trafficking or other serious criminal cases for prosecution.
    - ii. Create protocols with community service providers to offer protection such as health services, counseling and reintegration services for trafficked workers.
  - d. DoFE should develop guidelines for compensation that encompass not just differences in salary but also payment of medical costs and damages for physical and emotional suffering, as well as worker's other reasonable expenses for bringing a claim.
5. **The legislature and government should ensure enforceable rights and remedies for workers in an irregular status.**
- a. Amend the Foreign Employment Act 2007 to explicitly recognize the right of irregular workers to seek redress at DoFE and the tribunal.
  - b. In cases where workers were sent irregularly without their knowledge and suffered mutilation abroad, the FEPB should allow access to the welfare fund.
6. **The government should increase the visibility of women migrants, and improve protections and rights enforceability for women migrant workers.**
- a. Remove gender-specific restrictions on migration and make the ability to migrate through safe and legal channels equally available to all adult Nepalis.
  - b. Ensure that migrant resource centers and other services provide empowering information to prospective women migrant workers including their rights as workers, and contact numbers for assistance abroad and in Nepal.
  - c. Provide confidential, free, and voluntary health assessments for returning women migrant workers.
  - d. DoFE should create a women's desk to handle sensitive claims submitted by women, and to link women with other relevant services.
  - e. DoFE, the tribunal and the Welfare Fund should disaggregate data by gender, and analyze the processing of women's cases through their systems.



7. **Decentralize redress mechanisms and other essential labor migration services as a matter of urgency.**
  - a. DoFE should carry out plans to open and operate regional offices that can carry out the full functions of DoFE, including receiving and investigating complaints.
  - b. Consider expanding the roles and responsibilities of local government agencies, including local labor offices, to receive complaints from migrant workers.
  - c. Recommence registration of recruitment agency branch offices, and/or encouraging recruitment agencies to base themselves at the district level, ensuring that all agencies or branches currently in operation have the authority to recruit migrant workers and to respond to complaints.
  - d. Arrange for pre-departure orientations at the local level. Consider partnerships with civil society organizations already providing information in particular districts.
8. **Facilitate systemic inter-agency and civil society coordination, and collaborative data collection on effectiveness of redress mechanisms.**
  - a. The Ministry of Labor should facilitate information-sharing and coordination among different agencies and stakeholders involved in labor migration. For example, coordination to better identify problematic recruitment agencies and employer institutions, and to assist migrant workers to gather evidence to support their cases at home and abroad.
  - b. Encourage data collection and analysis across DoFE, embassies, police, other relevant government agencies and with civil society organizations, legal aid providers, unions, and migrant workers. Potential steps include:
    - i. Collect data from returning migrants as they exit the airport regarding problems experienced abroad.
    - ii. Collect and centralize data from Nepal's embassies regarding types of complaints filed against parties in destination countries, services provided, and outcomes for migrant workers.
    - iii. Collect and centralize data from police across Nepal regarding reports made against individual agents or recruitment agencies, and actions taken by police to resolve those cases.
    - iv. Maintain a streamlined case management system at DoFE and the tribunal for tracking types of claims, time to resolution, compensation sought and awarded, and worker satisfaction with the process.

- v. Create a complaints-reporting service through existing or new hotlines for migrant workers, free of charge in Nepal and abroad, that can receive complaints and direct migrant workers to services and that systematically records data on complaints (de-identified as necessary).

**9. Within redress mechanisms, address the practical needs of vulnerable migrant workers, including women.**

DoFE and the tribunal should assess the impact of socio-economic position, and diversity between different communities, on migrant workers' ability to make and sustain claims for redress. Amend procedures to reduce disparities in access.

**10. Increase resourcing, transparency, accountability and efficiency within DoFE and the tribunal to improve enforcement of migrant worker rights and private sector accountability.**

- a. Significantly increase DoFE resources overall, and specifically for investigating and processing claims. The unit should be at least tripled in size.
- b. Consider greater cooperation with police, including granting local police jurisdiction to investigate cases at the local level, and/or seconding to DoFE police with specialized expertise in financial crimes or human trafficking. Create an inter-agency MOU between police and DoFE for investigating cases.
- c. Set clear documentation requirements and facilitate workers' access to those documents. Establish exceptions to the documentation requirements for situations of contract substitution or document confiscation, particularly where DoFE has not kept a copy of original documents (or cannot make them accessible).
- d. Clarify DoFE's role in resolving claims brought by workers against recruitment agencies (i.e. facilitator, mediator or adjudicator), and establish decision-making criteria and processes that recognize the worker as a rights-holder. These should include explicit and publically available guidelines for determining compensation amounts for non-wage related harms, and potentially for reasonable expenses related to bringing claims.
- e. Address the large backlog of cases deemed "pending" before DoFE by creating separate but coordinated procedures for pursuit of criminal prosecution on the one hand and provision of compensation to the worker on the other, recognizing the economic and other pressures workers face that often lead them to settle a claim or withdraw their cooperation in the investigation and prosecution of criminal claims.

- f. Assess ways to improve migrant worker access to compensation awarded by the tribunal. Possible actions could include providing instructions to workers about collection of compensation, or strengthening enforcement powers of the tribunal.
  - g. Ensure the realization of a worker's right to legal representation during the filing and adjudication of claims before DoFE and the tribunal,
  - h. Require the provision of reasons for DoFE and tribunal decisions, and establish clear, transparent and accessible appeals processes that allow for the worker's participation and input.
- 11. Reform handling of cases against individual agents to achieve more timely payment of compensation.**
- a. Consider ways to streamline the process for filing and adjudicating cases against individual agents before the Foreign Employment Tribunal, which currently must pass through DoFE investigation and then prosecutorial review before DoFE can file a case in the tribunal, and to facilitate accelerated payment of compensation to workers. Delays in DoFE's filing of tribunal cases appear to incentivize workers to accept a compensation settlement and then seek to withdraw from the prosecution before the tribunal.
  - b. Prioritize particularly serious cases (for example a large number of victims, large amounts of money taken and not returned, or serial offending) for registration at the tribunal.
  - c. Remove the distinction between "individual" and "institutional" cases, and instead encourage joint liability between individual agents and recruitment agencies by expanding investigations against agencies named by individual agents, documenting past relationships between agents and recruitment agencies and also referring to stored contract information (see recommendations regarding contracts).
  - d. DoFE should take steps to shield workers from retaliation for pursuing claims.
- 12. Improve embassy support for migrant worker rights enforcement.**
- a. Amend the Foreign Employment Act 2007 to:
    - i. Give embassies an explicit mandate to assist migrant workers whose rights have been violated.

- ii. Set standards for employer institutions to recruit Nepali workers, against which a labor attaché must assess an employer or agency before it is allowed to recruit Nepali workers.
- b. Increase the number of labor attachés assigned to embassies within the Middle East, including posting female labor attachés in every country where female migrant workers are present.
- c. Maintain a publically accessible database regarding rights and responsibilities of workers, employer institutions, and recruitment agencies operating within destination countries.
- d. Maintain a database tracking complaints filed against specific employer institutions and employers, and the resolution of those complaints.
- e. Provide detailed guidelines to embassies regarding the scope of assistance to be provided to migrant workers with cases in destination countries, in coordination with DoFE and the Foreign Employment Promotion Board, and encourage each embassy to develop specific procedures relevant to the jurisdiction in cooperation with civil society organizations operating in the destination country.
- f. To the degree MoFA continues to negotiate bilateral agreements with key destination countries, it must seek to include key rights for migrant workers and responsible persons within each government.
- g. Work within SAARC to develop regional rights-based, protection-oriented standards.
- h. Increase coordination between embassies, the MoFA, DoFE, and the FEPB regarding the handling of transnational cases.
- i. Significantly increase resources for foreign embassies to assist migrant workers in distress, and provide comprehensive training to all diplomatic staff regarding the rights and redress options for migrant workers before posting. Ensure that specific gender-sensitive training is provided on the rights of female migrant workers and the barriers they face to accessing justice at home and abroad.
- j. Relevant actors should build on transnational models of assistance provided by PNCC and GEFONT to increase support services to workers in destination countries.

13. **The FEPB and legislature should improve access to the Foreign Employment welfare fund and insurance for all migrant workers.**
  - a. Increase outreach to workers and their families about rights to compensation under private insurance and through the welfare fund. For example, make information available at embassies abroad, at DoFE offices through brochures or information boards, and at the airport upon return.
  - b. Create mechanisms for filing claims with the welfare fund at the regional or district level, for example through migrant resource centers or local labor offices.
  - c. Consider expanding the scope of compensable losses under the welfare fund and/or under private insurance, e.g., for uncovered medical expenses or for a broader range of injuries or serious abuse.
14. **DoFE and the FEPB should cooperate to improve the reach of pre-departure orientation programs, and coverage of information on legal rights and seeking redress, building on existing non-government organization and union-led programs.**
  - a. Revise the manual for pre-departure orientation to include more detailed information about remedies for harms, and redress mechanisms.
  - b. Encourage participation at pre-departure orientations by offering programs at the district level (see above) or immediately prior to departure when workers are already in Kathmandu.
  - c. Review local information services, whether government or civil society-led, and identify and support replication of successful programs.
  - d. Continue to support and assess effectiveness of mass media programs that inform migrant workers about rights and redress options, and that combat stigma associated with failed migration, trafficking and abuse.

## **Recommendations to Non-Government Entities**

15. **Civil society organizations, unions, and legal aid organizations should continue to develop programs, services, and strategies to improve migrant workers' access to justice.**
  - a. Create a collaborative network of organizations and institutions working on migrant rights to develop and advocate for a more rights-based legal framework.

- b. Expand legal aid services to districts around Nepal, in coordination with each other and with existing government services.
- c. Increase the visibility of migrant workers in Nepal, particularly female migrant workers, and facilitate their participation in policy debates.
- d. Facilitate access to formal and informal redress mechanisms by providing comprehensive information to migrant workers about rights and redress options.
- e. Supplement government oversight of pre-departure processes, orientations, and redress services for migrant workers by providing timely research and monitoring, drawing on the direct experiences of migrant workers.
- f. Consider litigating strategic cases to challenge discriminatory practices, to enforce rights and government obligations under statute, the constitution and international law, and to ensure adequate remedies for workers.

**16. The international donor community should prioritize facilitation and improvement of access to justice for intending, current and former migrant workers.**

- a. Maintain support for infrastructure development, including effective, transparent and accessible electronic systems such as for verification and storage of contracts and other documents required for DoFE approvals, case management systems for claims investigation and adjudication, and inter-agency data-sharing platforms.
- b. Mainstream information about rights and redress options in pre-departure materials and programs funded by donors; continue to assess and improve coordination between information programs to ensure consistency of information given to migrant workers.
- c. Explore provision of technical assistance to the various redress mechanisms in Nepal to define and implement rights-based policies and procedures.
- d. Consider support for the following areas of further study:
  - i. Options for ensuring workers' more efficient access to redress before DoFE and the tribunal. Options could include streamlining processing of cases by DoFE that will ultimately be referred to the tribunal for adjudication; streamlining compensation procedures, and possible bifurcated procedures that would allow workers to obtain compensation in a timely fashion, while guarding against pressures to withdraw from prosecution for a reduced settlement sum.

- ii. The role of mediation including its ability to provide timely and adequate compensation to workers.
- iii. The regulation of recruitment agencies, and their relationships with individual agents, best practices, corporate codes of conduct, and other good governance models and mechanisms for ensuring justice in recruitment drawing on regional and global examples.
- iv. Approaches for encouraging regular migration.
- v. Opportunities for developing the capacity of local institutions, such as VDCs, to enable redress at the district level.
- vi. The nexus between social exclusion and access to justice, with the goal of identifying targeted ways to increase access for specific groups.
- vii. Mapping informal mechanisms available to migrant workers in a greater range of districts than was possible in this study. Consider, in particular, the treatment of women migrant workers and individuals from traditionally excluded groups, and coordination between informal and formal justice mechanisms.
- viii. Access to justice in key destination countries and opportunities for greater transnational collaborations.

## Annex 1: Sampling of Interviewees and Focus Group Participants

The study sought to meet with a broad range of migrant workers who had experienced problems abroad in order to reflect the range of harms experienced and the range of pathways used by migrant workers to seek justice. The sample was limited, however, to migrant workers who had travelled or sought to travel to the Middle East and who reported experiencing a problem at some point in the migration process.

Snowball and purposive sampling were used to identify migrant workers who met these criteria. The research team began by contacting local influential individuals, such as political workers, social activists and business people who were familiar with the local area and had a wide network of contacts. Identifying suitable interviewees then took considerable time—most migrant workers who had reportedly returned with problems had subsequently migrated again. Others were reluctant to be interviewed, citing fear of retaliation or shame regarding their negative experiences.

For all interviews, the interviewers explained the nature and purpose of the study, and interviews proceeded only with the consent of the interviewee. Ethical standards set by the University of New South Wales were used at all stages of the interview. Voice recorders were used except in the few cases in which the migrant worker or workers declined to be recorded.



# Location and Gender

Of the 54 migrant workers who eventually participated, either as interviewees (31) or focus group participants (23), 45 were men and 9 were women. All 9 women participated as focus group participants in Kathmandu (see Table 10, the total ‘27’ in the table below includes the four repeat participants in both in-depth interviews and focus groups).

**TABLE 10: Focus Groups by Location, Date and Participant Gender**

District	Region	Dates	Participants		
			Female	Male	Total
Kathmandu	Central	28 Aug 2012	4	—	4
Kathmandu	Central	28 Aug 2012	5	—	5
Sinurjoda VDC, Dhanusha	Central	8 July 2012	—	5	5
Sinurjoda VDC, Dhanusha	Central	31 Aug 2012	—	4	4
Sinurjoda VDC, Dhanusha	Central	1 Sept 2012	—	5	5
Sinurjoda VDC, Dhanusha	Central	1 Sept 2012	—	4	4
Total			9	18	27

**TABLE 11: In-depth Interviews by Location, Date**

District	Region	No. of respondents
Kathmandu	Central	18
Dhanusha	Central	10
Tahanu	Western	3
Total		31

Note: One respondent in the in-depth interviews was a female family member (sister) of two migrants. All the other respondents were male migrants.

# Country of Destination

Of the 54 total participants, only 46 were returnee migrant workers, whereas in the other 7 cases the placement had not eventuated due to various pre-departure problems. All 46 went to the Gulf region of the Middle East: 23 to Qatar, and the remainder to Saudi Arabia, Kuwait, the United Arab Emirates, Lebanon and Oman (see Table 12). As set out in Chapter 3 of this report, this is largely in line with the major destinations for Nepali migrant workers in the Middle East.

**TABLE 12: Destination Country for Returned Migrant Worker Participants in the Study**

Destination Country	Individual	FGDs	Total
Saudi Arabia	6	2	8
Oman	1	0	1
Qatar	12	11	23
UAE	3	2	5
Kuwait	2	6	8
Lebanon	0	1	1
<b>Total</b>	<b>24</b>	<b>22</b>	<b>46</b>

# Use of Formal or Informal Mechanisms

Of the 54 migrant worker participants, 49 had taken some action through either informal or formal means. Five had not sought any form of redress for problems experienced. Some members of this latter group did seek to take action on their own behalf, though, such as directly negotiating with the other party.



## Annex 2: Key Informant Interviews

	Organization/Agency ( <i>when interviewed</i> )	Name
<b>Kathmandu</b>		
1	Asian Human Rights and Culture Development Forum, Migrants Centre	Siddhi Chandra Baral
2	Department of Foreign Employment	Hari Singh Dhami
3	Department of Foreign Employment	Narayan Rimal
4	District Government Attorney Office, Kathmandu	Gopal Lamichhane
5	Foreign Employment Promotion Board	Girija Sharma
6	Foreign Employment Tribunal	Deepak Kharel
7	Foreign Employment Tribunal	Meera Khadka and Agni Prasad Thapaliya
8	Former Ambassador to Qatar	Maya Kumari Sharma
9	Former Ambassador to Qatar	Surya Nath Mishra
10	General Federation of Nepalese Trade Unions	Nisha Baniya
11	Global Reliance Overseas	Deepak Poudel
12	Himalayan Law Associates	Shambhu Niraula
13	Manaslu Manpower Agency	Raju Rayamajhi
14	Ministry of Foreign Affairs	Bishal Bhattarai

	<b>Organization/Agency (<i>when interviewed</i>)</b>	<b>Name</b>
15	Nabil Overseas	Radhika Katuwal
16	National Life Insurance Company	CP Dahal
17	Pardeshi Overseas Services	Mohan Nemwang
18	People Forum for Human Rights	Shom Luitel
19	Pourakhi	Manju Gurung
20	Pourakhi	Agni Gurung
21	Pravasi Nepali Coordination Committee	Mahendra Pandey
22	Pravasi Nepali Coordination Committee	J.P. Sapkota
23	Pravasi Nepali Coordination Committee	Aviman Singh Lama
24	Saviour Law Associates	Rewat Prasad Kharel
25	Special Government Attorney Office	Tek Bahadur Ghimire
26	Values and Vision Overseas	Padam Raj Poudel
27	WOREC Nepal	Rupa Shrestha
<b>Dhanusha</b>		
28	District Police Office	Ravi Ghimire
29	District Administration Office	Peshal Kumar Poudel
30	Pro-Public	Mithileshwor Jha
31	WOREC Nepal	Ram Pramesh Mandal

# Annex 3: Relevant International Conventions and Protocols Ratified by Nepal

## UN Conventions and Protocols

	Instrument	Date of Ratification/Accession
1	International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966	1991
2	International Covenant on Civil and Political Rights (ICCPR), 1966	1991
3	First Optional Protocol to the ICCPR, 1966	1991
4	Second Optional Protocol to the ICCPR on Abolition of the Death Penalty, 1989	1998
5	Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979	1991
6	Optional Protocol to CEDAW, 1999	2007
7	International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), 1965	1971

	<b>Instrument</b>	<b>Date of Ratification/Accession</b>
8	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984	1991
9	Convention on the Rights of the Child (CRC), 1989	1990
10	Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, 2000	2006
11	Convention on the Rights of Persons with Disabilities (CRPD), 2006	2010
12	Optional Protocol to the CRPD, 2006	2010
13	Vienna Convention on Consular Relations, 1963	1965
14	Convention against Transnational Organized Crime, 2000	2011
15	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000	not signed

## ILO Conventions

	<b>Convention</b>	<b>Date of Ratification/Accession</b>
1	Weekly Rest (Industry) Convention, 1921 (No. 14)	1986
2	Forced Labour Convention, 1930 (No. 29)	2002
3	Right to Organize and Collective Bargaining Convention, 1949 (No. 98)	1996
4	Equal Remuneration Convention, 1951 (No. 100)	1976
5	Force Labour Abolition Convention, 1957 (No. 105)	2007
6	Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	1974
7	Minimum Wage Fixing Convention, 1970 (No. 131)	1974
8	Minimum Age Convention, 1973 (No. 138)	1997
9	Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)	1995
10	Worst Forms of Child Labour Convention, 1999 (No. 182)	2002
11	Indigenous and Tribal Peoples Convention, 1989 (No. 169)	2007

# Notes

1. *Migrant Workers' Access to Justice at Home: Indonesia*, Bassina Farbenblum, Eleanor Taylor-Nicholson, Sarah Paoletti (2013), available at: <http://www.opensocietyfoundations.org/sites/default/files/migrant-worker-justice-indonesia-20131015.pdf>.
2. The World Bank. Data: Personal Remittances, Received (% of GDP). <http://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS>.
3. International Labour Organization. Migrant Workers. <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/migrant-workers/lang-en/index.htm> [accessed May 1, 2014].
4. Groves, S. 2012. "Remittances Hit \$534 Billion in 2012, Setting New Record," *International Diaspora Engagement Alliance*, November 26, 2012. <http://diasporaalliance.org/remittances-hit-a-record-high-of-534-billion-in-2012/>, quoting World Bank figures.
5. The World Bank. 2013. "Migrants from Developing Countries to Send Home \$414 Billion in Earnings in 2012." *The World Bank*, October 2, 2013. <http://www.worldbank.org/en/news/feature/2013/10/02/Migrants-from-developing-countries-to-send-home-414-billion-in-earnings-in-2013> [accessed May 1, 2014].
6. The World Bank. 2014. *Migration and Remittances: Recent Developments and Outlook*. Migration and Development Brief 22. Washington, D.C.: World Bank Migration and Remittances Team, Development Prospects Group: p. 3.
7. The World Bank. 2011. *Large-Scale Migration and Remittance in Nepal: Issues, Challenges, and Opportunities*. World Bank Poverty Reduction and Economic Management Sector Unit: South Asia Region: p. 26.
8. Central Bureau of Statistics. 2011. *Nepal Living Standards Survey 2010/11: Statistical Report Volume One*. Government of Nepal: National Planning Commission Secretariat: p. 138.



9. Studies which touch on access to justice and redress include: UNIFEM and People Forum for Human Rights. 2008. *Mahilako Surakcheet Vaideshik Rojgaar: Kanoonra Kanoon Karyanvayan Samyantraharuko Prabhavkarita* [in Nepali]. Kathmandu: UNIFEM and People Forum for Human Rights; and Amnesty International. 2011. *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*. London: Amnesty International.

10. *Migrant Workers' Access to Justice at Home: Indonesia*, Bassina Farbenblum, Eleanor Taylor-Nicholson, Sarah Paoletti (2013), available at: <http://www.opensocietyfoundations.org/sites/default/files/migrant-worker-justice-indonesia-20131015.pdf>.

11. The initial surge of migration to the Middle East is attributed to the oil boom era of the 1970s. But the surge of South Asian migration (including from Nepal) in particular was to come later following the Gulf War in 1990. Bandita Sijapati and Amrita Limbu. 2012. *Governing Labour Migration in Nepal*. Kathmandu, Nepal: Centre for the Study of Labour and Mobility: p. 28.

12. Central Bureau of Statistics. 2014. *National Population and Housing Census: Housing Characteristics, Dead and Absentee Population 2011*. Government of Nepal: National Planning Commission Secretariat: p. 262. [http://cbs.gov.np/wp-content/uploads/2014/03/Household\\_Tables.pdf](http://cbs.gov.np/wp-content/uploads/2014/03/Household_Tables.pdf) [accessed May 1, 2014].

13. The GCC Countries of the Gulf region include only Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. The 15 countries of the Middle East include the GCC countries as well as Iran, Iraq, Yemen, Syria, Israel, Jordan, Palestine, Lebanon and Egypt. Nepalis primarily go to GCC countries, but some, particularly women migrant domestic workers, also travel to Middle East countries such as Israel and Lebanon.

14. Hélène Harroff-Tavel and Alix Nasri. 2013. *Tricked and Trapped: Human Trafficking in the Middle East*. Lebanon: International Labour Organization, at p. 13. [http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms\\_211214.pdf](http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_211214.pdf) [accessed May 1, 2014].

15. In December 2013, a British newspaper, *The Guardian*, published a story highlighting the large number of young Nepali construction workers dying on construction sites or in their lodgings, which led to considerable scrutiny of and pressure on the Gulf country. Pete Pattison. 2013. "Qatar's World Cup Slaves." *The Guardian*, Sept. 25, 2013. <http://www.theguardian.com/world/2013/sep/25/revealed-qatars-world-cup-slaves> [accessed May 1, 2014].

16. Auwal, M.A. 2010. "Ending the Exploitation of Migrant Workers in the Gulf," Fletcher Forum of World Affairs 34 (Summer): 87–108, at 88–89. ("Migrant workers today are an extremely vulnerable group and are caught up in the throes of a vicious problem that is created and sustained by poverty, labor rackets, dynamics of globalization, and government inaction or corruption in both their home and host countries," noting as well the deception in recruitment in their home countries, including the charging of excessive fees and distribution of false and misleading information). See also Amnesty International. 2011. *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*. London: Amnesty International; and Human Rights Watch. 2010. *Slow Reform: Protection of Migrant Domestic Workers in Asia and the Middle East*. New York: Human Rights Watch.

17. For example, the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, opened for signature December 18, 1990, 30 I.L.M. 1517 (entered into force July 1, 2003).

18. International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, opened for signature Dec. 18, 1990, 30 I.L.M. 1517 (entered into force July 1, 2003). While Nepal has not yet ratified the CMW, it has ratified the majority of the UN and ILO treaties upon which the CMW relies.
19. Ibid., Preamble.
20. Adopted and signed January 5, 2002, and entered into force November 15, 2005. <http://www.saarc-sec.org/userfiles/conv-trafficking.pdf> [accessed May 1, 2014].
21. Dhaka Declaration of Colombo Process Member Countries. Colombo Process, April 21, 2011. [http://www.colomboprocess.org/images/docs/dc2011/dhaka\\_declaration.pdf](http://www.colomboprocess.org/images/docs/dc2011/dhaka_declaration.pdf) [accessed May 1, 2014]. (Indonesia and Nepal are members of the Colombo Process).
22. CEDAW General Recommendation 26, paras. 10-11.
23. Ibid., para. 24.
24. ABA Rule of Law Initiative. 2012. *Access to Justice Assessment Tool: A Guide to Analyzing Access to Justice for Civil Society Organizations*. New York: American Bar Association: p. 1.
25. The World Bank. *A Framework for Strengthening Access to Justice in Indonesia*. Washington, D.C.: The World Bank. <http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/A2/FrameworkEnglish.pdf>, citing to Bedner, A. (2004). *Towards Meaningful Rule of Law Research: An Elementary Approach*. Unpublished manuscript; and Van Vollenhoven Instituut and United Nations Development Programme. 2005. *Access to Justice Practitioner Guide*. Bangkok: United Nations Development Programme.
26. For more on formal and informal justice systems, see, for example, Ewa Wojkowska. 2006. *Doing Justice: How Informal Justice Systems Can Contribute*. Oslo: United Nations Development Programme–Oslo Governance Centre.
27. The ABA-ROLI assessment tool includes, for example: a legal framework establishing rights and duties and providing “mechanisms to solve their common justice problems”; citizen knowledge of rights and duties, and mechanisms for achieving justice; access to legal advice and representation; accessibility, affordability, and timeliness of justice institutions; institutions that provide citizens opportunity to present case, independence, and opportunity for voluntary and informed decisions regarding settlement of dispute; and enforceability of decisions. The World Bank, by contrast, considers the existence of: a normative legal framework; legal awareness, looking not just at the awareness of laws, rights and responsibilities, but also how to access the relevant mechanisms; actual access to the mechanisms, both formal and informal; the effective administration of justice through those mechanisms; and, transparency and accountability. Vel, J. 2010. “Policy Research on Access to Justice in Indonesia: A Review of World Bank and UNDP Reports.” *Law, Social Justice and Global Development Journal* 15: 1–27.
28. United Nations Development Programme. 2004. *Access to Justice Practice Note*. New York: United Nations Development Programme: pp. 5–6.
29. The Tarai region has a population of 13,318,705 persons, with a density of 382 people per square kilometer, compared to the hill region with a density of 186, and the sparsely populated mountains with a population density of just 34 persons per square kilometer. Central Bureau of Statistics. 2012. *National Population and Housing Census 2011*. Government of Nepal: National

Planning Commission Secretariat: p. 39. <http://cbs.gov.np/wp-content/uploads/2012/11/National%20Report.pdf> [accessed May 1, 2014].

30. Central Bureau of Statistics. 2012. *National Population and Housing Census 2011*. Government of Nepal: National Planning Commission Secretariat. <http://cbs.gov.np/wp-content/uploads/2012/11/National%20Report.pdf> [accessed May 1, 2014].

31. The small number of migrants interviewed in Tanahun was, notably, because very few migrants approached by the authors had experienced problems abroad. Tanahun has a long history of out-migration, for example, into the Indian and British armies, and there is a common perception that the population in Tanahun is “experienced” regarding travelling abroad, and violations are perceived as fewer.

32. In most cases, the original Nepali versions of the laws were used to verify provisions in the English translations.

33. United Nations. 2011. *Opening the Door to Equality: Access to Justice for Dalits in Nepal*. Kathmandu: Office of the High Commissioner for Human Rights: p. 11.

34. For detailed analysis of migration data, see Pandey, Shibani, Sanjay Sharma, and Bimbika Sijapati-Basnett, “State of Migration in Nepal” (forthcoming research paper, Centre for the Study of Labour and Mobility).

35. Department of Foreign Employment. 2012. *Amendment to the Directive to Regulate Nepali Workers going for Domestic Work 2010* [amended on August 2012]. [http://dofe.gov.np/uploads/document/House%20Mad\\_20120830091239.pdf](http://dofe.gov.np/uploads/document/House%20Mad_20120830091239.pdf) [accessed May 1, 2014].

36. Central Bureau of Statistics. 2012. *National Population and Housing Census 2011*. Government of Nepal: National Planning Commission Secretariat: p. 2. <http://cbs.gov.np/wp-content/uploads/2012/11/National%20Report.pdf> [accessed May 1, 2014].

37. Central Bureau of Statistics. 2014. *National Population and Housing Census: Housing Characteristics, Dead and Absentee Population 2011*. Government of Nepal: National Planning Commission Secretariat: p. 71. [http://cbs.gov.np/wp-content/uploads/2014/03/Household\\_Tables.pdf](http://cbs.gov.np/wp-content/uploads/2014/03/Household_Tables.pdf) [accessed May 1, 2014].

38. Department of Foreign Employment. 2013. *Ashar Monthly Progress Report, Jun-July 2013*. Department of Foreign Employment: Kathmandu: p. 26. [http://dofe.gov.np/uploads/document/final%20report%20of%20Shrawan\\_20130826121650.pdf](http://dofe.gov.np/uploads/document/final%20report%20of%20Shrawan_20130826121650.pdf) [accessed May 1, 2014].

39. Centre for the Study of Labour and Mobility. Interactive Map. <http://www.ceslam.org/map/map.php> [accessed May 1, 2014].

40. The World Bank. 2011. *Large-Scale Migration and Remittance in Nepal: Issues, Challenges, and Opportunities*. World Bank Poverty Reduction and Economic Management Sector Unit: South Asia Region: p. 28.

41. Central Bureau of Statistics. 2014. *National Population and Housing Census 2011* (Volume 4). Government of Nepal: National Planning Commission Secretariat: p. 71.

42. The World Bank. 2011. *Large-Scale Migration and Remittance in Nepal: Issues, Challenges, and Opportunities*. World Bank Poverty Reduction and Economic Management Sector Unit: South Asia Region: pp. 35–36.

43. 16.4 percent of the population of the eastern region lives in the poorest nominal per capital income quintile, as compared to 17.0 percent from the central region, 18.7 percent from the western region, 28.9 percent from the mid-western region; and 31.9 percent from the far-western region. Central Bureau of Statistics. 2011. *Nepal Living Standards Survey 2010/11: Statistical Report Volume Two*. Government of Nepal: National Planning Commission Secretariat: p. 49. [http://cbs.gov.np/wp-content/uploads/2012/02/Statistical\\_Report\\_Vol2.pdf](http://cbs.gov.np/wp-content/uploads/2012/02/Statistical_Report_Vol2.pdf) [accessed May 1, 2014].
44. The World Bank. 2011. *Large-Scale Migration and Remittance in Nepal: Issues, Challenges, and Opportunities*. World Bank Poverty Reduction and Economic Management Sector Unit: South Asia Region: p. 30.
45. Some level of wealth is often needed to obtain a loan to travel abroad; however, it should also be noted that having a family member abroad increases wealth through remittances. Ibid., 35.
46. Ibid., 32.
47. Ibid.
48. The probability of a family in the lowest household wealth quintile sending a family to work in the Gulf is 7.3 percent, and for the second lowest wealth quintile the figure is 9 percent. Ibid., 35.
49. Ibid., ii.
50. Department of Foreign Employment. 2013. *Ashar Monthly Progress Report, June–July 2013*. Department of Foreign Employment: Kathmandu. [http://dofe.gov.np/uploads/document/final%20report%20of%20Shrawan\\_20130826121650.pdf](http://dofe.gov.np/uploads/document/final%20report%20of%20Shrawan_20130826121650.pdf) [accessed May 1, 2014].
51. Department of Foreign Employment. <http://www.dofe.gov.np/en/> [accessed May 1, 2014]. See also Foreign Employment Promotion Board. [www.fepb.gov.np](http://www.fepb.gov.np) [accessed May 1, 2014].
52. The census records the size of absentee population and does not record the legal status of the migrant. The absentee population includes those away from their place of birth or residence for a number of reasons including employment, study or business.
53. Central Bureau of Statistics. 2014. *National Population and Housing Census 2011* (Volume 4). Government of Nepal: National Planning Commission Secretariat: p. 71. Note that in 2009 the World Bank also found that between 6–7 percent of migrant workers from Nepal were women, but also considered this to be an understatement. The World Bank. 2011. *Large-Scale Migration and Remittance in Nepal: Issues, Challenges, and Opportunities*. World Bank Poverty Reduction and Economic Management Sector Unit: South Asia Region: p. ii.
54. Central Bureau of Statistics. 2014. *National Population and Housing Census 2011* (Volume 4). Government of Nepal: National Planning Commission Secretariat: p. 71. See also Department of Foreign Employment. 2013. *Ashar Monthly Progress Report, June–July 2013*. Department of Foreign Employment: Kathmandu.
55. A total of 10,713 labor permits have been issued by DoFE for employment in Lebanon from 2006/07 to 2012/13. Department of Foreign Employment. 2013. *Ashar Monthly Progress Report, June–July 2013*. Department of Foreign Employment: Kathmandu.
56. The World Bank. 2011. *Large-Scale Migration and Remittance in Nepal: Issues, Challenges, and Opportunities*. World Bank Poverty Reduction and Economic Management Sector Unit: South Asia Region: p. 57.

57. Jagannath Adhikari, "Poverty, Globalisation and Gendered Labour Migration in Nepal," in *Poverty, Gender and Migration: Women and Migration in Asia*, ed. Sadhnya Arya and Anupama Roy: 87–106 (New Delhi: Sage Publications Ltd., 2006), vol. 2.

58. The total number of households in 2011 was 5,423,297. Central Bureau of Statistics. 2011. *National Population and Housing Census 2011* (Volume 1). Government of Nepal: National Planning Commission Secretariat: p. 35. <http://cbs.gov.np/wp-content/uploads/2012/11/National%20Report.pdf> [accessed May 1, 2014].

59. The literacy rate for men in Nepal is about 70 percent, whereas for women it is just 54 percent. Also, women comprise two-thirds (66 percent) of the illiterate population of Nepal, which is a greater proportion than low-income countries in general, for which the average is 60 percent. Central Bureau of Statistics. 2011. *National Population and Housing Census 2011* (Volume 1). Government of Nepal: National Planning Commission Secretariat: p. 226. <http://cbs.gov.np/wp-content/uploads/2012/11/National%20Report.pdf> [accessed May 1, 2014]. See also United Nations Educational, Scientific, and Cultural Organization. Education for All Global Monitoring Report. <http://gmr.uis.unesco.org/ViewTable.aspx> [accessed May 1, 2014].

60. Chandra Bhadra. 2006. "International Labour Migration of Nepalese Women: The Impact of Their Remittances on Poverty Reduction" (working paper, Asia-Pacific Research and Training Network on Trade, 2008). See also Adhikari, Jagannath, Chandra Bhadra, Ganesh Gurung, Bishnu P. Niroula, and David Seddon. *Nepali Women and Foreign Labour Migration*. Kathmandu: UNIFEM/NIDS.

61. Foreign Employment Act 1985 at S. 12 prohibited a recruitment agency from providing "foreign employment to children and women without the consent of her guardian." In 1998, the Second Amendment to the Act expanded the permissions required for women and children to "permission of His Majesty's Government and guardians." The Second Amendment of 1998 defined "guardian" to be either (a) mother or father of an unmarried woman or husband of a married woman, or (b) elder or younger brother aged 21 years or more of an unmarried woman living in the same family or father-in-law or mother-in-law of a married woman (if relatives mentioned in (a) are unavailable).

62. Restrictions are imposed either by the Cabinet or the Ministry of Labour and Employment in consultation with the Ministry of Foreign Affairs. A public notice is then issued either through the state-owned newspaper *Gorkhapatra*, or other news media, as well as in the *Nepal Gazette*. Interview with an official at the Department of Foreign Employment, Kathmandu, July 15, 2013.

63. Nepali Times. "Womanpower: Migration Should Be a Choice, Not a Compulsion." *Nepali Times*, March 23–29, 2012. <http://nepalitimes.com/news.php?id=19120> [accessed May 1, 2014].

64. Unofficial translation of the notice: according to the decision made by the government of Nepal on 8/8/2012, the age bar of 30 years has been imposed on female migrants going to work as domestic workers. It has come to the government's notice that majority of the female migrant workers are forced to work for long hours (18–20 hours) daily. Young women who go abroad by increasing their age in documents are unable to work long hours, face physical and mental abuses and do not have the capability to face the consequences. The government has thus been compelled to set up such a provision for the betterment of women. Foreign Employment Promotion Board. [www.fepb.gov.np](http://www.fepb.gov.np) [accessed May 1, 2014].

65. Republica. "Govt Bans Women Workers in Lebanon." *Republica*, November 26, 2009. [http://archives.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=12231](http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=12231) [accessed May 1, 2014].

66. Foreign Employment Act 2007, Section 46. Recruiters, however, find it difficult to keep abreast of restrictions on migration, and at least one study revealed that recruitment agencies are often confused about which countries and which migrants may be sent abroad. Amnesty International. 2011. *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*. London: Amnesty International: pp. 49–51.

67. The 2001 census recorded 2,031 women working in the Gulf countries, despite the fact that the government had imposed the ban on all female migration to all Gulf States three years earlier. Central Bureau of Statistics. 2002. *Population Census 2001*. Government of Nepal: National Planning Commission Secretariat.

68. BBC. “Nepal Women Banned from Middle East Over Exploitation.” *British Broadcasting Corporation*, August 9, 2012.

69. UNIFEM and NIDS. 2006. *Nepali Women and Foreign Labour Migration*. Kathmandu: UNIFEM and NIDS; Jagannath Adhikari, “Poverty, Globalisation and Gendered Labour Migration in Nepal,” in *Poverty, Gender and Migration: Women and Migration in Asia*, ed. Sadhnya Arya and Anupama Roy, 87–106 (New Delhi: Sage Publications Ltd., 2006), vol. 2.; Sangraula, L.N. 2003. *Foreign Employment for Women: Challenges and Opportunities*. Kathmandu: Sancharika Samuha and United Nations Development Fund for Women; and O'Neill. T. 2001. “Selling Girls in Kuwait: Domestic Labour Migration and Trafficking Discourse in Nepal.” *Anthropolgia* 43(2): 153–164.

70. It is common practice for workers to transit through India, which shares an open border with Nepal, because migrants are allowed to cross the border without documentation, and need to only furnish a citizenship certificate or passport when transitioning through airports. In this way, they can defy government regulations on foreign labor migration.

71. UN Women. *Nepal*. UN Women: Asia Pacific and Arab States Regional Programme on Empowering Women Migrant Workers in Asia. <http://www.migration-unifem-apas.org/nepal/> [accessed May 1, 2014].

72. Chandra Bhadra. 2013. *The Impact of Foreign Labour Migration to Enhance Economic Security and Address VAW among Nepali Women Migrant Workers and Responsiveness of Local Governance to Ensure Safe Migration*. Kathmandu: Ministry of Women, Children and Social Welfare, Ministry of Labour and Employment, Ministry of Federal Affairs and Local Development, Government of Nepal: p.10. <http://fepb.gov.np/newdolrm/uploads/userfiles/files/Final%20Report%20-%20Submitted%20on%2028%20January%202013-1.pdf> [accessed May 1, 2014].

73. Adhikari, Jagannath and Ganesh Gurung. 2011. *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*. Kathmandu: Ministry of Labour and Transport Management and International Organisation for Migration.

74. Nepal Institute of Development Studies and Swiss National Centre of Competence in Research North-South. 2010. *Nepal Migration Year Book 2009*. Kathmandu: Nepal Institute of Development Studies and Swiss National Centre of Competence in Research North-South: p. 72.

75. Department of Foreign Employment. 2013. *Chaitra Monthly Progress Report: March–April 2013*. [http://dofe.gov.np/uploads/document/final%20data\\_20130422031605.pdf](http://dofe.gov.np/uploads/document/final%20data_20130422031605.pdf) [accessed May 1, 2014].

76. The minimum salary of Nepali workers in the UAE is 800 Dirham. It is 900 Qatari Riyal in Qatar and 800 Saudi Riyal in Saudi Arabia, in addition to facilities of food for all three coun-

tries. Department of Foreign Employment. 2012. *Notice*. Kathmandu: Government of Nepal. <http://dofe.gov.np/np/news/detail.php?g=13> [accessed May 1, 2014]; Government of Nepal, Ministry of Labour and Employment. 2013. *Nepal Gazette* 2069. [http://www.molm.gov.np/uploads/news/file/all\\_20130227014557.pdf](http://www.molm.gov.np/uploads/news/file/all_20130227014557.pdf) [accessed April 12, 2013].

77. Interview with male migrant worker, Sinurjoda, Dhanusha, July 7, 2012.

78. Interview with male migrant worker, Kathmandu, August 28, 2012.

79. Bajracharya, Roojaa and Bandita Sijapati. 2012. *The Kafala System and Its Implications for Nepali Domestic Workers: Policy Brief No. 1*. Kathmandu: Centre for the Study of Labour and Mobility. [http://www.ceslam.org/docs/publicationManagement/Kafala\\_Nepali\\_Domestic\\_Workers\\_Female\\_Migration\\_Eng.pdf](http://www.ceslam.org/docs/publicationManagement/Kafala_Nepali_Domestic_Workers_Female_Migration_Eng.pdf) [accessed May 1, 2014].

80. Foreign Employment Act 2007, Sections 28–29.

81. Foreign Employment Act 2007, Section 38(1). Functions, duties and powers of the Board are set out in greater detail in Section 39 of the Act.

82. These ministries include: Ministry of Agriculture and Cooperatives, Ministry of Home Affairs, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Law, Justice and Parliamentary Affairs, and Ministry of Women, Children and Social Welfare.

83. Foreign Employment Promotion Board. 2013. *Barshik Pratibedan 2069/70* [Annual Report 2012/13]. Foreign Employment Promotion Board, Ministry of Labour and Employment: pp. 33–5.

84. Foreign Employment Promotion Board. Costs Required for Foreign Employment. [http://www.fepb.gov.np/downloadfile/lagat\\_1305454188.pdf](http://www.fepb.gov.np/downloadfile/lagat_1305454188.pdf) [accessed May 1, 2014].

85. The deposit must be paid in cash, or alternatively agencies can pay NPR 700,000 (US\$ 7827) in cash and the remaining amount as bank guarantee. Foreign Employment Act 2007, Section 11(2); and Foreign Employment Rules 2008, Rule 6(2).

86. Department of Foreign Employment. “RA Name List.” <http://www.dofe.gov.np/uploads/pdf/RAReport1.pdf> [accessed May 1, 2014]. Five recruitment agencies were interviewed for this study.

87. To obtain permission, the agency must describe where the office will be located, demonstrate a detailed action plan for the office, the physical infrastructure and human resources required for operation, and provide evidence that the intended manager of the branch is a Nepali citizen. Foreign Employment Rules 2008, Rule 47(2).

88. Department of Foreign Employment. [http://dofe.gov.np/uploads/document/manpower%20branches\\_20121122072918.pdf](http://dofe.gov.np/uploads/document/manpower%20branches_20121122072918.pdf) [accessed April 15, 2014].

89. For example, in June 2013, DoFE reportedly fined one of the largest recruitment agencies in Nepal, Jupiter Overseas NPR, 200,000 for opening branch offices without permission and closed the offices down. See Karobar Daily. “46 Manpower Agencies Fined.” *Karobar National Economic Daily*, June 13, 2013. <http://www.karobardaily.com/news/2013/06/46-manpower-agencies-fined> [accessed May 1, 2014].

90. Foreign Employment Rules 2008, Rule 13(b).

91. Foreign Employment Act 2007, Section 28.

92. Foreign Employment Act 2007, Sections 27 and 28.



93. Department of Foreign Employment. 2013. *The Directive on the Licensing and Renewal of Institutions Providing Orientation Training—2013*. Kathmandu. <http://dofe.gov.np/uploads/pdf/documentmapdanda.pdf> [accessed May 1, 2014].
94. Note that the cash deposit in this case cannot be used to pay claims against training centers; the only potential sanctions for training centers are suspension and cancellation of licenses to operate. Foreign Employment Rules 2008, Rules 22 and 23.
95. Foreign Employment Act 2007, Section 74(3) and Foreign Employment Rules 2008, Rule 48(10).
96. Foreign Employment Rules 2008, Rule 48(3).
97. Foreign Employment Rules 2008, Rule 48(2). The rules do not define what kind of foreign employment related matters nor provide a means of verifying knowledge.
98. The law does create an offense of aiding or abetting the commission of any offence under the act, which might be used to hold recruitment agencies accountable for the conduct of unregistered individual agents that provide them with workers, although the authors are unaware of this provision having been used in this manner. Foreign Employment Act 2007, Section 56.
99. Department of Foreign Employment. *Magh Monthly Progress Report, Jan–Feb 2014*. [http://www.dofe.gov.np/uploads/document/Untitled\\_20140223042931.pdf](http://www.dofe.gov.np/uploads/document/Untitled_20140223042931.pdf) [accessed April 3, 2014].
100. A notice published by DoFE on February 13, 2014, mentioned that the department had stopped issuing the earlier form of identification card to the agents. The same notice also stated that DoFE would issue bio-metric based identification cards in the near future and requested the individual agents to work for only one recruitment agency at a time. Department of Foreign Employment. *Magh Monthly Progress Report, Jan–Feb 2014*. [http://www.dofe.gov.np/uploads/document/Untitled\\_20140223042931.pdf](http://www.dofe.gov.np/uploads/document/Untitled_20140223042931.pdf) [accessed April 3, 2014].
101. Department of Foreign Employment. 2014. Notice. [http://dofe.gov.np/uploads/news/image/Suchana\\_Bio-Metric%20System\\_20140224061832.jpg](http://dofe.gov.np/uploads/news/image/Suchana_Bio-Metric%20System_20140224061832.jpg) [accessed April 15, 2014].
102. Foreign Employment Act 2007, Section 30. The Council for Technical Education and Vocational Training (CTEVT) is a national autonomous apex body of technical and vocational education and training sectors committed to the production of technical and skillful human resources. Some of its major responsibilities include policy formulation, quality control, preparation of competency based curriculum, developing skill standards of various occupations and testing the skills of the people, conduct various research studies and training needs assessment, etc. The council currently has 179 accredited training institutions, including affiliated schools, annex schools, and constituted schools. Council for Technical Education and Vocational Training. <http://www.ctevt.org.np/> [accessed May 1, 2014].
103. Interview with a director of a recruitment agency, Kathmandu, June 5, 2012.
104. Department of Foreign Employment. Insurance Company-List of Companies that Insure Nepali Migrant Workers. [http://www.dofe.gov.np/np/innerpage.php?page\\_id=73](http://www.dofe.gov.np/np/innerpage.php?page_id=73) [accessed April 3, 2014].
105. World Bank. 2011. *Large-Scale Migration and Remittance in Nepal: Issues, Challenges, and Opportunities*. World Bank Poverty Reduction and Economic Management Sector Unit: South Asia Region: p. 52.



106. Amnesty International. 2011. *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*. London: Amnesty International: p. 34.
107. Ibid.
108. See also Foreign Employment Rules 2008, Rule 12.
109. See also Foreign Employment Rules 2008, Rule 13.
110. Foreign Employment Act 2007, Section 16(1); and Rules 2008, Rule 14.
111. Foreign Employment Act 2007, Section 17; and Rules 2008, Rule 17.
112. Ganesh Gurung. 2004. *An Overview Paper on Overseas Employment in Nepal*. Kathmandu: International Labour Office. [http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-kathmandu/documents/publication/wcms\\_116815.pdf](http://www.ilo.org/wcmsp5/groups/public/@asia/@ro-bangkok/@ilo-kathmandu/documents/publication/wcms_116815.pdf) [accessed May 1, 2014].
113. These requirements are a combination of those set out in the Foreign Employment Act 2007, Section 19(1), and the Foreign Employment Rules 2008, Rule 17.
114. Department of Foreign Employment. 2014. *Chaitra Monthly Progress Report, March-April 2014*. [http://www.dofe.gov.np/uploads/document/Chaitra%202070\\_20140430052407.pdf](http://www.dofe.gov.np/uploads/document/Chaitra%202070_20140430052407.pdf) [accessed May 1, 2014].
115. Amnesty International. 2011. *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*. London: Amnesty International: pp. 22-25.
116. The Asia Foundation. 2014. *Labour Migration Trends and Patterns: Bangladesh, India and Nepal 2013*. Kathmandu: The Asia Foundation. <http://asiafoundation.org/resources/pdfs/LabourMigrationTrendsandPatternsBangladeshIndiaandNepal2013.pdf> [accessed May 1, 2014].
117. Interview with recruitment agency, Kathmandu, June 4, 2012.
118. Interview with recruitment agency, Kathmandu, June 5, 2012.
119. The Asia Foundation. 2014. *Labour Migration Trends and Patterns: Bangladesh, India and Nepal 2013*. Kathmandu: The Asia Foundation: p. 18. <http://asiafoundation.org/resources/pdfs/LabourMigrationTrendsandPatternsBangladeshIndiaandNepal2013.pdf> [accessed May 1, 2014].
120. Interview with male migrant worker, Dhanusha District, July 7, 2012.
121. Amnesty International. 2011. *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*. London: Amnesty International; UNIFEM and People Forum for Human Rights. 2008. *Mahilako Surakcheet Vaideshik Rojgaar: Kanoonra Kanoon Karyanvayan Samyantraharuko Prabhavkarita* [in Nepali]. Kathmandu: UNIFEM and People Forum for Human Rights; The Asia Foundation. 2014. *Labor Migration Trends and Patterns: Bangladesh, India and Nepal 2013*. Kathmandu: The Asia Foundation; and Verité. 2013. *Labor Brokerage and Trafficking of Nepali Migrant Workers*. Amherst, MA: Verité.
122. Note that all migrant workers participating in this study were included because they reported experiencing a problem, so the numbers do not reveal frequency of harms across migrant workers as a whole.
123. This was announced by the Department of Foreign Employment through a notice that was published on December 6, 2010.

124. Interview with a male migrant worker, Kathmandu, June 12, 2012. Although the agent originally demanded NPR 500,000 from him, he went to Dubai in 1998 paying only 200,000.

125. Interview with a male migrant worker who was not sent abroad, Kathmandu, June 12, 2012. He gave the individual agent NPR 400,000 and the agent never returned.

126. Amnesty International. 2011. *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*. London: Amnesty International: p. 28.

127. Verité. 2013. *Labor Brokerage and Trafficking of Nepali Migrant Workers*. Amherst, MA: Verité: p. 39. Research for the Verité report was conducted in Guatemala, India, Malaysia, Mexico, Nepal, the United Arab Emirates, and the United States.

128. Helene Harroff-Tavel and Alix Nasri. 2013. *Tricked and Trapped: Human Trafficking in the Middle East*. Beirut: ILO Regional Office for the Arab State: pp. 103–105.

129. A study conducted by Social Science Baha and the World Bank indicates that returnees mostly use remittance money to fulfil household requirements, repay loans they took to migrate, and pay for education. The migrants ranked the repayment of loans as the eighth most important aspect after some vital ones like daily expenses, education, health, and others. See The World Bank. 2013. *Migration and Entrepreneurship in Nepal with a Focus on Youth: An Initial Analysis*. Kathmandu: The World Bank.

130. Interview with male migrant worker, Dhanusha District, July 7, 2012.

131. Of the 12 contracts, eight were for workers going to Qatar, three to the UAE, and one to Saudi Arabia.

132. Note that the labor law of the destination country usually includes provisions for breach. For example the UAE Labor Law, Federal Law No. 8, allows an employer to dismiss the employee without notice or reason during the worker's probation period (Article 120). Sensitive issues such as this tend not to be included in the contract, however, so workers are almost certainly unaware of them before departure.

133. While one contract indicated that the worker could not transfer employers, the rest were silent on the rights of the worker in terms of changing employers. Under the *kafala* system, workers are tied to their initial sponsor unless they can change sponsors. This usually requires the initial sponsor's permission, however. For more information on the operation of the *kafala* system in different GCC states, see, for example, Just Here. "A Comparison of 'Kafala' System in GCC; Qatar Lags Behind on Reforms." *Just Here*, May 8, 2014. <http://www.justhere.qa/2013/11/comparison-kafala-system-gcc-qatar-lags-behind-reforms/> [accessed May 8, 2014].

134. Verité. 2013. *Labor Brokerage and Trafficking of Nepali Migrant Workers*. Amherst, MA: Verité: p. 41. Research for the Verité report was conducted in Guatemala, India, Malaysia, Mexico, Nepal, the United Arab Emirates, and the United States.

135. Ibid.

136. Interview with male migrant worker, Dhanusha District, July 6, 2012.

137. In this case, the 21 migrants had paid a collective sum of NPR 6,776,000 (approximately \$6700) to a recruitment agency for work in Tanzania. The migrants were first taken to Delhi, India, where some were left behind. Others were taken on to Tanzania, but no position awaited them and

they were left stranded without income. The migrants came back to Nepal and filed a complaint against the recruitment agency at DoFE.

138. In this case, an agent promised the victim that he would help him travel to Canada for a fee of NPR 500,000 (approximately \$5,000). The migrant left Nepal and reached Bangkok where he waited for 45 days before realizing he was stranded and would not be travelling further. He returned to Nepal and filed a complaint at DoFE against the agent.

139. See, for example, Pete Pattison. "Qatar's World Cup Slaves." *The Guardian*, September 25, 2013. <http://www.theguardian.com/world/2013/sep/25/revealed-qatars-world-cup-slaves> [accessed May 1, 2014]; Smith-Spark, Laura, Alex Thomas, and Leone Lakhani. "Qatar Defends 2022 World Cup Project Amid Migrant Worker Abuse Claims." *CNN*, October 3, 2013. <http://www.cnn.com/2013/10/03/world/meast/qatar-workers-rights/> [accessed May 1, 2014]; Robert Booth. "Qatar World Cup Construction Will Leave 4,000 Migrant Workers Dead." *The Guardian*, September 26, 2013. <http://www.theguardian.com/global-development/2013/sep/26/qatar-world-cup-migrant-workers-dead> [accessed May 1, 2014]; and Anup Khaple, "A Nepali Woman Went to Kuwait with Dreams But Came Home in a Coffin." *Pulitzer Center for Crisis Reporting*, January 6, 2014. <http://pulitzercenter.org/reporting/asia-gulf-emirates-nepal-migrant-labor> [accessed May 1, 2014].

140. Male migrant worker, focus group, Dhanusha District, July 8, 2012.

141. Data obtained from the Foreign Employment Promotion Board on June 20, 2012. Note that the number listed here does not include all deaths, but only those deaths where the migrant worker was in regular status, the body was repatriated, and the family able to file a claim. It does not necessarily indicate where the most deaths occur.

142. Gibson, Owen, and Pete Pattison. "Qatar World Cup: 185 Died in 2013—Official Records." *The Guardian*, January 24, 2014. <http://www.theguardian.com/world/2014/jan/24/qatar-2022-world-cup-185-nepalese-workers-died-2013> [accessed May 1, 2014].

143. Foreign Employment Promotion Board. 2013. *Annual Report 2069/70* [2011/12]. Kathmandu: Foreign Employment Promotion Board.

144. Olivia Sterns. 2009. "Spate of Suicides by Foreign Maids in Lebanon Sheds Light on Abuse." *CNN*, December 2, 2009. <http://edition.cnn.com/2009/WORLD/meast/12/02/lebanon.suicides/index.html> [accessed May 1, 2014].

145. Hélène Harroff-Tavel and Alix Nasri. 2013. *Tricked and Trapped: Human Trafficking in the Middle East*. Beirut: International Labour Organization Regional Office for the Arab States: p. 56. [http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms\\_211214.pdf](http://www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_211214.pdf) [accessed May 1, 2014].

146. The World Bank. 2011. *Large-Scale Migration and Remittance in Nepal: Issues, Challenges, and Opportunities*. World Bank Poverty Reduction and Economic Management Sector Unit: South Asia Region: p. 57.

147. Female migrant worker, focus group, Kathmandu, August 28, 2012.

148. Interview with male migrant worker, Sinurjoda VDC, Dhanusha, July 7, 2012.

149. For an overview of Nepal's legal system, see Urscheler, L.H. 2012. "Innovation in a Hybrid System: The Example of Nepal." *Potchefstroom Electronic Law Journal*: 15.

150. In addition to these provisions, under section 43 the accused will also be fined NPR300,000-500,000 and is subject to a jail term of 3–7 years.
151. The contract must set forth the “terms and conditions of employment, terms and conditions to be observed by both parties and remuneration of the worker and the terms to be observed by both parties.” Foreign Employment Act 2007, Section 25; and Foreign Employment Rules 2008, Rule 2(b).
152. Foreign Employment Act 2007, Section 25(2). In August 2012, the government reiterated that recruitment agencies must provide the employment contract in Nepali, although contracts in Arabic or English may still be considered valid if a problem arises. Department of Foreign Employment. Notice to Provide Contract Papers in Nepali to Migrant Workers. <http://dofe.gov.np/np/news/detail.php?g=11><http://dofe.gov.np/np/news/detail.php?g=11> [accessed May 1, 2014]. See also the bilateral agreements signed between Nepal and destination countries of the Middle East; and Sijapati, Bandita and Amrita Limbu. 2012. *Governing Labour Migration in Nepal*. Kathmandu: Centre for the Study of Labour and Mobility.
153. The law is ambiguous as to whether one contract is required, or whether two contracts are required. Section 25 of the Act uses the term contract in the singular, referencing the worker, recruitment agency and employer. However, Sections 15 and 19, discussing requirements for approval from DoFE for sending workers for foreign employment, indicate that there are two separate contracts, one between the employer and the worker, and one between the recruitment agency and the worker.
154. The Foreign Employment Rules 2008 do not mention the contracts in the list of items to be provided for either pre-approval or final approval, but the language of the Rules (Rules 12 and 19) suggests that the items listed in the Rules are in addition to, not instead of, the items listed in the Act.
155. The required content of training is covered in the Foreign Employment Rules 2008, Chapter 6, and includes the foreign employment law of Nepal, the social, cultural and geographic context of the destination country, language of the destination country, relevant laws of the destination country, health matters including sexually transmitted diseases and occupational health and safety, safe migration, “conduct, treatment and safety” of workers, and how to remit money.
156. Foreign Employment Rules 2008, Rule 20.
157. The Human Trafficking and Transportation (Control) Act 2007.
158. Trafficking under the HTTCA includes “(a) to buy or sell a person for any purpose; (b) to engage someone in prostitution, with or without receiving a benefit; (c) to extract a human organ except as determined by law; or (d) to engage in prostitution.” (Section 4(1)). A victim is defined as a “person who is sold, transported or put into prostitution.” (Section 2(c)).
159. For a more detailed analysis of the definitions under the HTTCA, see The Asia Foundation. 2014. *Anti-Human Trafficking and Transportation Act: Its Implementation*. The Asia Foundation: Kathmandu.
160. HTTCA Section 4(2).
161. The United Nations definition of trafficking is contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *entered into force* December 25, 2003,

Article 3. [http://www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_%20traff\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf) [accessed May 1, 2014].

162. See Urscheler, L.H. 2012. "Innovation in a Hybrid System: The Example of Nepal." *Potchefstroom Electronic Law Journal* 15; and Höfer, A. 2004. *The Caste Hierarchy and the State in Nepal: A Study of the Muluki Ain of 1854*. Kathmandu: Himal Books.

163. Shrestha, A. 2013. "Gender Perspective on Proposed Report and Draft of Criminal Code, Criminal Procedure Code, and Criminal Offence Punishment (Control and Enforcement) Act, 2067." *New Spotlight News Magazine* 7. <http://www.spotlightnepal.com/News/Article/Gender-perspective-on-proposed-report> [accessed May 1, 2014].

164. Civil Code, Part 4, Chapter 3: Cheating, Paragraphs 1–2.

165. Civil Code, Preliminary Matters, Clause 4.

166. Civil Code, Part 4, Chapter 3: Cheating, Paragraph 4; and Foreign Employment Act 2007, Sections 43 and 44.

167. Foreign Employment Act 2007, Section 25.

168. The Himalayan Times. "Age Bar on Migrant Maids Draws Rights Flak." *The Himalayan Times*, August 9, 2012. <http://www.unwomensouthasia.org/assets/Nepal-bans-women-under-30-from-working-in-the-Gulf.pdf> [accessed May 1, 2014].

169. Interim Constitution of Nepal 2063 (2007), Preamble.

170. In its submission to the UN Human Rights Committee for its review under the ICCPR, the Government of Nepal interpreted Article 33 of the ICCPR as obligating the state "to effectively implement the international treaties to which Nepal is a party." See Government of Nepal. 2010. *Second, Third and Fourth Periodic Reports of the Government of Nepal on Measures Taken to Give Effect to the International Covenant On Civil and Political Rights*. Government of Nepal: Ministry of Home Affairs, at paragraph 37. <http://www.nepalmissiongeneva.org/wp-content/uploads/2012/08/ICCPR-Report-II-III-IV.pdf> [accessed May 1, 2014].

171. The National Human Rights Commission Act, 2053 (1997) defines "human rights" as "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and other prevailing laws and such other rights as are embodied in the international treaties relating to human rights to which Nepal is a party." Human Rights Commission Act, 2053 (1997), Chapter 1, Section 2(f).

172. The Government of Nepal has reiterated before various United Nations human rights bodies its commitment to international human rights law, and respect for and promotion of its treaty obligations. See, e.g., Government of Nepal. 2010. *Second, Third and Fourth Periodic Reports of the Government of Nepal on Measures Taken to Give Effect to the International Covenant On Civil And Political Rights*. Government of Nepal: Ministry of Home Affairs, at paragraph 34. <http://www.nepalmission-geneva.org/wp-content/uploads/2012/08/ICCPR-Report-II-III-IV.pdf>. ("Nepal strongly upholds the principles enunciated in the United Nations Charter and the rights set forth in the UDHR and the ICCPR.")

173. Nepal is also a party (through accession) to the Vienna Convention on Consular Relations, as are the GCC states to which its migrants travel. The Vienna Convention establishes functions of

consular posts, including: “protecting in the receiving State, the interests of the sending State and of its nationals, both individuals and bodies corporate, within the limits permitted by international law.” (Article 5(a)). Additional functions include: “5(i) subject to the practices and procedures obtaining in the receiving State, representing or arranging appropriate representation for nationals of the sending State before the tribunals and other authorities of the receiving State, for the purpose of obtaining, in accordance with the law and regulations of the receiving State, provisional measures for the preservation of the rights and interests of these nationals, where, because of absence or any other reason, such nationals are unable at the proper time to assume the defence of their rights and interests; (j) transmitting judicial and extra-judicial documents or executing letters rogatory or commissions to take evidence for the courts of the sending State in accordance with international agreements in force or, in the absence of such international agreements, in any other manner compatible with the laws and regulations of the receiving State.” Article 36 further provides for free communication between the consular officers and their nationals in the receiving State, including those nationals in prison or subject to the custody of the receiving state, and places on the receiving state the obligation of notifying the consular officer, if requested, of the arrest or commitment to prison or custody of any national of the sending state. Of particular relevance to Nepali migrant workers, Article 37 provides: “If the relevant information is available to the competent authorities of the receiving State, such authorities shall have the duty: (a) in the case of the death of a national of the sending State, to inform without delay the consular post in whose district the death occurred.”

174. Nepal became a party by accession on December 10, 2002.

175. There are numerous examples of the Supreme Court relying on provisions of international human rights treaties, such as CEDAW, when those claims have been raised through individual cases and public interest litigation. See Ilana Landsberg-Lewis. 1998. *Bringing Equality Home*. New York: UNIFEM: p .22. [http://www.unifem.org/attachments/products/BringingEqualityHome\\_eng.pdf](http://www.unifem.org/attachments/products/BringingEqualityHome_eng.pdf) [accessed May 1, 2014].

176. Interim Constitution of Nepal 2063 (2007), Article 132(1).

177. Those include: the conduct of “inquiries and investigations... upon a petition or complaint presented to the Commission by the victim himself/herself or any person on his/her behalf or upon information received from any source, or on its own initiative—(1) Violation of human rights and abetment thereof. (2) Carelessness or negligence in the prevention of violations of the human rights of any person, organizations or authority concerned.” Human Rights Commission Act, 2053 (1997), Section 9(2)(a).

178. Human rights are defined by the Human Rights Commission Act as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and other prevailing laws and such other rights as are embodied in the international treaties relating to human rights to which Nepal is a party.” Human Rights Commission Act, 2053 (1997), Section 2(f). While the Human Rights Commission, as with the Women’s Commission, may provide an alternate mechanism for bringing complaints of human rights violations as they relate to migrant workers, the Human Rights Commission Act has an extremely short statute of limitations, and allows only for claims filed within six months of the offense. This may present an unrealistic barrier to migrant workers who may be trapped abroad for longer than six months, or who may lack the knowledge or resources for bringing a complaint before the Commission, which is located in Kathmandu.

179. The Nepal Treaty Act, 2047 (1990) specifies: “‘Treaty’ means an agreement concluded in writing between two or more states, or between any state and any inter-governmental organization and this term also includes any document of this nature, irrespective of how it is designated.” Section 2(a).

180. Agreement between His Majesty’s Government of Nepal and the Government of the State of Qatar Concerning Nepalese Manpower Employment in the State of Qatar, signed in Doha, April 21, 2005; Memorandum of Understanding between the Government of Nepal and the Government of United Arab Emirates in the Field of Manpower, signed in Kathmandu, July 3, 2007, by the Nepal Minister of Labor and Transport Management, and the UAE Minister for Labor; and Memorandum of Understanding in the Areas of Labour and Occupational Training between the Government of Nepal and the Government of the Kingdom of Bahrain, signed in Kathmandu, April 29, 2008, by the Nepal Minister of Labor and Transport Management, and the Kingdom of Bahrain Minister of Labor.

181. Interview with Charito Riley, Solidarity Center, Sri Lanka (by telephone), January 2014.

182. Interview with Bishal Bhattarai, Section Officer, Ministry of Foreign Affairs, Kathmandu, June 7, 2012.

183. The model contract is not a public document. The research team sought a copy of the model contract from several government agencies including the Ministry of Foreign Affairs but was not able to locate the document.

184. Interview with Maya Kumari Sharma, former ambassador to Qatar, Kathmandu, February 11, 2014.

185. As mentioned by the late Sthaneshwor Devkota, Director of the Foreign Employment Promotion Board, February 24, 2012 (as cited in Sijapati, Bandita and Amrita Limbu. 2012. *Governing Labour Migration in Nepal*. Kathmandu: Centre for the Study of Labour and Mobility); and Roshan Sedhai. 2014. “Government to Sign Labour Pact with Saudi Arabia.” *The Kathmandu Post*, February 21, 2014. <http://www.ekantipur.com/2014/02/21/world/government-to-sign-labour-pact-with-saudi-arabia/385666.html> [accessed May 1, 2014].

186. Foreign Employment Act 2007, Section 61.

187. Interview with Narayan Rimal, Director, Complaints Registration and Investigation Section, DoFE, Kathmandu, January 2014.

188. A lawyer interviewed for the study noted that a receipt from an individual is usually a simple paper, whereas if money is taken by an institution, the receipt/paper should have a stamp. Interview with Saviour Law Associates Pvt. Ltd., Dillibazar, Kathmandu, December 18, 2013.

189. Ibid.

190. Ibid.

191. In 2012/2013, for example, the total number of complaints made against individuals was 1,245 or 54.01 percent of cases and against institutions was 1,060 or 45.99 percent of cases. Department of Foreign Employment. *Ashar Monthly Progress Report, July/August, 2013*.

192. The proportion of individual complaints in this sample was higher than the proportion of individual complaints received by DoFE, according to DoFE figures. Possible reasons given by DoFE for

this discrepancy were that in some cases the individual named may in fact have been a recruitment agency staff member and this was only identified later in the process and not reflected in the initial data. (It could also be due to a sampling error because the files were not chosen systematically.)

193. Interview with Narayan Rimal, Director, Complaints Registration and Investigation Section, DoFE, Kathmandu, January 10, 2014.

194. Interview with Saviour Law Associates Pvt. Ltd., Dillibazar, Kathmandu, December 18, 2013; and People Forum, Kathmandu, March 11, 2014.

195. Interview with Meera Khadka and Agni Prasad Thapaliya, Chairperson and member of the Foreign Employment Tribunal respectively, Kathmandu, June 7, 2012.

196. The exception to this is cases where recruitment fees were stolen by the agent and a recruitment agency had not been engaged. Interview with People Forum, Kathmandu, March 11, 2014.

197. The jurisdiction of DoFE to resolve complaints and make orders is made clear in each offense, which say that “the Department shall order...”[Section 48-51, 53-55 of Foreign Employment Act 2007]. If this phrase is not included, it is assumed that DoFE does not have jurisdiction and the case must be referred to the Foreign Employment Tribunal to make a finding of culpability and order redress.

198. Interview with People Forum, Kathmandu, March 11, 2014.

199. Interview with Narayan Rimal, Director, Complaints Registration and Investigation Section, DoFE, Kathmandu, March 11, 2014.

200. The current cash deposit amount required is NPR 3,000,000 [approximately, US\$ 30,000].

201. Interview with Narayan Rimal, Director, DoFE Investigation Section, Kathmandu, January 10, 2014. He observed that the recruitment agency is then free to challenge the license suspension decision in the courts. Recently DoFE cancelled the license of eight manpower companies mainly for issuing fake documents to obtain labor permits. Republica. “DoFE scraps license of 8 manpower agencies.” *Republica*, February 20, 2014. [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=69828](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=69828) [accessed May 1, 2014]; Roshan Sedhai. “MoLE Scraps Licences of 265 Manpower Cos.” *Ekantipur.com*, September 29, 2012. <http://www.ekantipur.com/2012/09/29/capital/mole-scraps-licences-of-265-manpower-cos/360897.html> [accessed May 1, 2014].

202. Interview with Narayan Rimal, Director, Complaints Registration and Investigation Section, Kathmandu, March 11, 2014; and interview with Saviour Law Associates Pvt. Ltd., Dillibazar, Kathmandu, December 18, 2013.

203. The Office of the Special Government Attorney was created to handle cases of foreign employment, money laundering, bank fraud, and corruption. Interview with Dr. Tek Bahadur Ghimire, Deputy Attorney General, Special Government Attorney Office (*Bisesh Sarkari Wokil Karyalaya*), Kathmandu, January 21, 2014. See also the SGA website. <http://sgao.gov.np/about-us/departments/> [accessed May 1, 2014].

204. Interview with Dr. Tek Bahadur Ghimire, Deputy Attorney General, Special Government Attorney Office (*Bisesh Sarkari Wokil Karyalaya*), Kathmandu, January 21, 2014.

205. The authors reviewed a number of decision chits from DoFE files in the course of conducting the research.



206. Interview with Gopal Lamichhane, Assistant District Attorney, District Government Attorney Office, Babarmahal, Kathmandu, December 19, 2013.
207. Interview with Narayan Rimal, Director, Complaints Registration and Investigation Section, DoFE.
208. Interview with Recruitment Agency Director, Kathmandu, June 15, 2012.
209. Interview with Recruitment Agency Director, Kathmandu, June 4, 2012.
210. Interview with WOREC, Kathmandu, June 12, 2012.
211. The Himalayan Times. "Most Cases Filed at DoFE Are Not Genuine." *The Himalayan Times*, January 1, 2014. <http://www.thehimalayantimes.com/fullNews.php?headline=Most+cases+filed+at+DoFE+not+genuine&NewsID=403661> [accessed May 1, 2014].
212. Interview with Meera Khadka, Chairperson, and Agni Prasad Thapaliya, member, Foreign Employment Tribunal, Kathmandu, June 7, 2012; and Interview with Saviour Law Associates Pvt. Ltd., Dillibazar, Kathmandu, December 18, 2013.
213. Interview with Hari Singh Dhami, Investigating Officer, Department of Foreign Employment, Kathmandu, June 15, 2012.
214. Interview with Narayan Rimal, Director, Complaints Registration and Investigation Section, DoFE, Kathmandu, January 10, 2014.
215. Department of Foreign Employment. 'Internal Operational Directives of the Department of Foreign Employment, 2009' <http://dofe.gov.np/uploads/pdf/43Nirdesika%20Final%202066-05-30.pdf> [access on 10 May 2014]
216. Others include the special court to hear corruption cases, the administrative court for challenges to administrative action, and the labor court for local labor cases.
217. Foreign Employment Act 2007, Section 64(1).
218. If a recruitment agency is found guilty of any offense, punishment must also be imposed on the individual office bearer who committed the offense or if he/she cannot be identified, on the "chief" of the agency. Foreign Employment Act 2007, Section 57.
219. The following details are to be included, among others: details of the defendant, the charge and his or her property; law related to the charges; supporting evidence and appropriate punishment and/or recommended award of compensation. Foreign Employment Tribunal Rules 2012, Section 5(1).
220. Foreign Employment Rules 2008, Rules 38 and 39.
221. Interview with Dr. Tek Bahadur Ghimire, Deputy Attorney General, Special Government Attorney Office (*Bisesh Sarkari Wokil Karyalaya*), Kathmandu, January 21, 2014.
222. Foreign Employment Tribunal Rules 2012, Section 8.
223. Foreign Employment Tribunal Rules 2012, Section 6.
224. The Interim Constitution Article 24 (10) provides that anyone incapable of paying for his or her own attorney in criminal cases is entitled to free legal aid. However, this study has not revealed any instance in which the agent has asked for free legal aid.
225. Foreign Employment Act 2007, Section 57.

226. Foreign Employment Tribunal Rules 2012, Rule 18(4).
227. Interview with Gopal Lamichhane, Government Attorney, Kathmandu, December 19, 2013.
228. Foreign Employment Act 2007, Section 66(2).
229. Foreign Employment Act 2007, Section 51.
230. Foreign Employment Rules 2008, Rule 41.
231. Interview with Rewat Prasad Kharel, advocate, Saviour Law Associates Pvt. Ltd., Dillibazar, Kathmandu, December 18, 2013.
232. Interview with Tek Bahadur Ghimire, Government Attorney, Kathmandu, January 21, 2014.
233. Interview with People Forum, Kathmandu, June 12, 2012 and March 12, 2014.
234. Since DoFE is not a court of record, there is no formal citation format for these cases.
235. The first legislation creating the commission was passed in 1997. In 2012, new legislation, the Human Rights Commission Act 2012, was passed, which clarified the role of the commission.
236. See Sadhana Ghimire, et al. 2013. *Human Rights Situation of Nepalese Migrant Workers: Observation and Monitoring Report, South Korea and Malaysia*. Lalitpur, Nepal: National Human Rights Commission. [http://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/HR%20situation%20of%20Nepalese%20Migrant%20Worker%20Report%20Aug30-Sept7-2013.pdf](http://www.nhrcnepal.org/nhrc_new/doc/newsletter/HR%20situation%20of%20Nepalese%20Migrant%20Worker%20Report%20Aug30-Sept7-2013.pdf) [accessed May 1, 2014]; and National Human Rights Commission. 2012. *International Conference on the Rights of Migrant Workers, Nov 26-27, 2012, Kathmandu*. Lalitpur, Nepal: National Human Rights Commission. [http://www.nhrcnepal.org/nhrc\\_new/doc/newsletter/RWM%20Report\\_05Feb\\_2013.pdf](http://www.nhrcnepal.org/nhrc_new/doc/newsletter/RWM%20Report_05Feb_2013.pdf) [accessed May 1, 2014].
237. James Michael, Barry Walsh and Mihir Thakur. 2009. *Nepal Rule of Law Assessment: Final Report*. USAID: Rule of Law Division, Office of Democracy and Governance. [http://www.ncf.org.np/upload/files/318\\_en\\_usaid\\_nepal%20rule%20of%20law%20assessment-sep-2009.pdf](http://www.ncf.org.np/upload/files/318_en_usaid_nepal%20rule%20of%20law%20assessment-sep-2009.pdf) [accessed May 1, 2014].
238. The Peace Agreement can be found on the United Nations Nepal Information Platform, at <http://un.org.np/node/10498>.
239. Freedom House. 2012. *Countries at the Crossroads 2012: Nepal*. Freedom House. <http://www.freedomhouse.org/report/countries-crossroads/2012/nepal> [accessed May 1, 2014].
240. United Nations Development Programme. 2012. *Project Report: Enhancing Access to Justice for the Consolidation of Peace in Nepal (A2J)*. UNDP. <http://www.undp.org/content/nepal/en/home/operations/projects/closed-projects/poverty-reduction1/a2j.html> [accessed May 1, 2014].
241. According to Muluki Ain Chapter 3, the victim may only recover the amount that was lost, for example the recruitment fees (section 4). However, under the Foreign Employment Act 2007, the victim may recover the lost amount plus an additional 50 percent in compensation.
242. Interview with People Forum, and President of the Nepal Bar Association Committee on Migrant Workers, Kathmandu, March 12, 2014.
243. Supreme Court of Nepal. Judiciary. [http://www.supremecourt.gov.np/main.php?d=lawmaterial&f=constitution\\_part\\_II](http://www.supremecourt.gov.np/main.php?d=lawmaterial&f=constitution_part_II) [accessed May 1, 2014].

244. American Bar Association. 2011. *Human Trafficking Assessment Tool Report for Nepal*. Washington, D.C.: American Bar Association. [http://www.americanbar.org/content/dam/aba/directories/roli/nepal/nepal\\_human\\_trafficking\\_assessment\\_report\\_2011.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/directories/roli/nepal/nepal_human_trafficking_assessment_report_2011.authcheckdam.pdf).

245. Ibid.

246. Ibid., 58.

247. Ibid., 83.

248. Interview with Saviour Law Associates Pvt. Ltd., Dillibazar, Kathmandu, December 18, 2013.

249. See e.g. Nepal National Human Rights Commission. 2012. *Trafficking in Persons, Especially on Women and Children in Nepal: National Report 2011*. Lalitpur, Nepal: Nepal National Human Rights Commission Office of the Special Rapporteur on Trafficking in Women and Children: p. 208; and The Asia Foundation. 2014. *Anti-Human Trafficking and Transportation Act: Its Implementation*. The Asia Foundation: Kathmandu.

250. Ibid., 72.

251. Ibid., 71.

252. Verité. 2013. *Labor Brokerage and Trafficking of Nepali Migrant Workers*. Amherst, MA: Verité, at p. 21.

253. Government of Nepal. 2013. *A Report on Anti-Human Trafficking Cases Initiatives Led by the Government of Nepal*. Kathmandu: Government of Nepal, Ministry of Women, Children and Social Welfare: p. 22. <http://asiafoundation.org/resources/pdfs/GONreportonantihumantraffickinginitiativesFY20122013.pdf> [accessed May 1, 2014].

254. Ibid., 23.

255. Foreign Employment Act 2007, Sections 19(c) and 26(1).

256. Foreign Employment Act 2007, Section 26(1): “The licensee shall, prior to sending a worker for foreign employment, procure insurance of at least five hundred thousand rupees with validity for the term of the worker’s contract so that such worker can claim damages for death or mutilation, if such worker who has gone for foreign employment pursuant to this Act dies from any cause at any time or gets mutilated.” Mutilation is not defined in the Foreign Employment Act 2007 or the Rules 2008.

257. Foreign Employment Act 2007, Sections 21(2) and 26(2).

258. Department of Foreign Employment. Insurance Company. [http://www.dofe.gov.np/en/inner-page.php?page\\_id=42](http://www.dofe.gov.np/en/inner-page.php?page_id=42) [accessed May 1, 2014]. Note that private insurance companies are regulated by the Beema Samiti (Insurance Regulatory Authority) of Nepal, located in Kathmandu.

259. Interview with C.P. Dahal, Assistant Executive Officer, National Life Insurance Company, February 10, 2014.

260. In Nepal, regular life insurance allows the insured to be reimbursed after a certain period of time. Interview with C.P. Dahal, Assistant Executive Officer, National Life Insurance Company, Kathmandu, February 10, 2014.

261. Interview with Radhika Katurwal, Recruitment Agency Director, Kathmandu, June 12, 2012; and Interview with Mohan Nembang, Recruitment Agency Director, Kathmandu, June 4, 2012.

262. Interview with Asian Human Rights and Culture Development Forum/Migrants' Center, Kathmandu, December 27, 2013. AHRCDF is a social organization established by migrant workers and aims to contribute toward strengthening the underprivileged, marginalized and the poor. AHRCDF has been working in the fields of education, health care, skill development, cultural awareness and conservation and awareness of migrants workers. Interview with Mahendra Pandey, Pravasi Nepali Coordination Committee, Kathmandu, December 25, 2013. PNCC is a nongovernmental organization involved in various issues pertaining to labor migrants including awareness raising of prospective migrants, providing legal services to migrants, policy advocacy, support in cases of injury/death and fraud, and reintegration of migrants into society upon their return.

263. Sagar Ghimire. 2014. "Make Details of Policy Buyers Online: DoFE." *Republica*, March 3, 2014. [http://www.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=70389](http://www.myrepublica.com/portal/index.php?action=news_details&news_id=70389) [accessed May 1, 2014].

264. Ibid.

265. Interview with C.P. Dahal, Assistant Executive Officer, National Life Insurance Company, Kathmandu, February 10, 2014.

266. Interview with Assistant Executive Officer, National Life Insurance Company, February 10, 2014.

267. Interview with director of a recruitment agency, Kathmandu, June 5, 2012.

268. Interview with director of a recruitment agency, Kathmandu, June 12, 2012.

269. Interview with PNCC, Kathmandu, January 29, 2014.

270. Interview with director of a recruitment agency, Kathmandu, June 12, 2012.

271. Interview with representatives of a civil society organization and a recruitment agency, Kathmandu, June 5, 2012.

272. Interview with C.P. Dahal, Assistant Executive Officer, National Life Insurance Company, Kathmandu, February 10, 2014.

273. National Life Insurance Company. Term Life Insurance Policy for Migrant Workers. [http://www.nicnepal.com/ins\\_personal\\_personal.php](http://www.nicnepal.com/ins_personal_personal.php) [accessed May 1, 2014].

274. Interview with C.P. Dahal, Assistant Executive Officer, National Life Insurance Company, February 10, 2014.

275. Foreign Employment Act 2007, Section 32(1).

276. Ibid., Section 39(c).

277. Ibid., Section 33; and Foreign Employment Rules 2008, Rule 26.

278. Ibid., Section 33.

279. Ibid., Sections 33(b) and (d).

280. The FEPB has a board including the minister of state for labor and employment, the minister of state/assistant minister for labor and employment, a member of the national planning commission, the secretary of the ministry, a secretary or gazetted first class level representative from each of the following ministries: foreign affairs, finance, law and justice, and women, children and

social welfare. The board also includes the director general of DoFE, a representative of Nepal Rastra Bank, two government nominees (including one woman) from foreign employment experts, two nominees (including one woman) from foreign employment entrepreneurs, two nominees (including one woman) from orientation training operators, one MBBS (at least) doctor, chairpersons of four recognized trade unions, representative from FNCCI, a representative from CTEVT, and finally the executive director of the FEPB. Foreign Employment Act 2064 (2007), Section 38(1).

281. The Himalayan Times. 2010. "Government Supports 179 Migrant Workers." *The Himalayan Times*, November 24, 2010. <http://www.thehimalayantimes.com/fullNews.php?headline=Govt+sup+ports+179+migrant+workers+&NewsID=266943> [accessed May 1, 2014].

282. Roshan Sedhai. 2014. "Fund Piles Up, Govt Lacks Plans for Migrants' Care." *Ekantipur.com*, March 19, 2014. <http://www.ekantipur.com/2014/03/19/top-story/fund-piles-up-govt-lacks-plans-for-migrants-care/386932.html> [accessed May 1, 2014].

283. Prabhaka Ghimire. 2010. "Overseas Worker Fund Spent on Labor Minister." *Republika*, June 24, 2010. [http://archives.myrepublica.com/portal/index.php?action=news\\_details&news\\_id=20247](http://archives.myrepublica.com/portal/index.php?action=news_details&news_id=20247) [accessed May 1, 2014].

284. Roshan Sedhai. "Failure to Utilize Welfare Funds Add to Migrant Workers' Woes." *The Kathmandu Post*, August 16, 2012. <http://www.ekantipur.com/the-kathmandu-post/2012/08/16/nation/failure-to-utilise-welfare-funds-adds-to-migrant-workers-woes/238471.html> [accessed May 1, 2014].

285. Ibid.

286. Roshan Sedhai. 2014. "Fund Piles Up, Govt Lacks Plans for Migrants' Care." *Ekantipur.com*, March 19, 2014. <http://www.ekantipur.com/2014/03/19/top-story/fund-piles-up-govt-lacks-plans-for-migrants-care/386932.html> [accessed May 1, 2014].

287. Access to compensation from the welfare fund for either death or mutilation is limited to "any worker who has gone for foreign employment in accordance with the Act or these Rules." Foreign Employment Rules 2008, Rules 28(1) and (3).

288. Foreign Employment Rules 2008, Rule 28(1).

289. This time limit has been amended by the Foreign Employment (First Amendment) Rules of 2011. Prior to the amendment, the deadline for submission of application was six months for death compensation and 60 days for compensation of injury.

290. Foreign Employment Promotion Board. Financial Support provided by the Board. <http://www.fepb.gov.np/content.php?id=98> [accessed April 5, 2014].

291. The Nepal embassy will send this document back with the worker/body of the deceased worker. Interview with WOREC, June 12, 2012, Kathmandu.

292. Although the embassies are expected to provide this paperwork, WOREC noted that it is difficult for families of migrants to gather the documents and the lack of human resources at embassies further exacerbates the challenges. Ibid.

293. In most cases the embassy or the FEPB help the migrants/families to purchase tickets, but in some cases the sponsor will provide the tickets, or the migrant worker or family will buy the ticket independently. Interviews with Girija Sharma, then Acting Executive Director of the FEPB and Bishal Bhattarai, Section Officer of the MoFA.

294. The Foreign Employment (first Amendment) Rules 2011 increased the amount from NPR 100,000 in cases of both death and mutilation to NPR 150,000.
295. Interview with Girija Sharma, then Acting Executive Director of the FEPB, Kathmandu, June 20, 2012.
296. Foreign Employment Promotion Board. *Progress Report, Feb–March 2014*. [http://www.fepb.gov.np/downloadfile/Phalgun\\_1395641840.pdf](http://www.fepb.gov.np/downloadfile/Phalgun_1395641840.pdf) [accessed April 5, 2014].
297. Interview with People Forum, Kathmandu, June 12, 2012.
298. Interview with Bishal Bhattacharai, Section Officer, Ministry of Foreign Affairs, Kathmandu, June 7, 2012; and interview with Surya Nath Mishra, former Nepali ambassador to Qatar, Dhanusha, July 4, 2012.
299. Government of Nepal, Ministry of Foreign Affairs. Consular Affairs–“Background.” <http://www.mofa.gov.np/en/background-148.html> [accessed May 1, 2014].
300. Ministry of Foreign Affairs. Nepalese Missions Abroad. [http://www.mofa.gov.np/en/mis-sion\\_consuls/index/1](http://www.mofa.gov.np/en/mis-sion_consuls/index/1) [accessed May 1, 2014].
301. The provision of labor attachés was established by Foreign Employment Act 2007, Sections 43 and 68(1). It states that labor attachés shall be posted to countries in which 5,000 or more Nepalis have been sent for foreign employment, or more than 1,000 women migrant workers are registered.
302. The Kathmandu Post. 2011. “Govt Appoints Six Labour Attachés After MoFA Nod.” *The Kathmandu Post*, November 5, 2011. <http://www.ekantipur.com/the-kathmandu-post/2011/11/04/nation/govt-appoints-six-labour-attachs-after-mofa-nod/227847.html> [accessed May 1, 2014].
303. Foreign Employment Promotion Board. Nepalese Embassies & Labour Attache. <http://www.fepb.gov.np/content.php?id=96> [accessed May 6, 2014].
304. Foreign Employment Act 2007, Sections 68(2)(b), (c), (e) and (g).
305. The spokesman for the Ministry of Foreign Affairs described embassy functions regarding foreign employment as including verifying employment letters, diplomatic exercises (for example, negotiating bilateral agreements), the repatriation of workers and arranging new documents for irregular workers. Interview with Bishal Bhattacharai, Section Officer, Ministry of Foreign Affairs, Kathmandu, June 7, 2012.
306. Interview with Maya Kumari Sharma, Former Ambassador to Qatar 2012–2013, February 11, 2014, Kathmandu.
307. Ibid.
308. Information on embassy services in Qatar was gathered in an interview with Maya Kumari Sharma, former Ambassador to Qatar 2012–2013, Kathmandu, February 11, 2014; and interview with Surya Nath Mishra, former Ambassador to Qatar, Dhanusha, July 4, 2012.
309. Interview with Surya Nath Mishra, former Nepali ambassador to Qatar, Dhanusha, July 4, 2012.
310. Interview with migrant worker, focus group, Sinurjoda VDC, Dhanusha, August 20, 2012.
311. Ministry of Labor and Employment, Foreign Employment Promotion Board and ILO. *Orientation Training Curriculum Booklet*. Ministry of Labor and Employment, Foreign Employment Promotion Board and ILO. Kathmandu: p. 133.

312. Interview with Maya Kumari Sharma, former Ambassador to Qatar 2012–2013, February 11, 2014, Kathmandu.

313. Interview with male migrant worker, Therakochri VDC, Dhanusha, July 8, 2012. Note that this case occurred in 2003, before the reform of the labour migration system.

314. Interview with male migrant worker, Dhanusha, July 4, 2012.

315. Interview with Pourakhi, Kathmandu, June 8, 2012.

316. Interview with PNCC, Kathmandu, May 31, 2012.

317. For instance, despite reports about widespread abuse and fraud experienced by migrant workers, in fiscal year 2012/13, 2,305 cases were registered at the Department of Foreign Employment. That year, 453,453 Nepalis migrated for work beyond India and an unknown number of additional Nepalis paid fees for foreign employment but never departed, suggesting that the number of people using the formal mechanisms to resolve their problems is very small.

318. Central Bureau of Statistics. 2014. *National Population and Housing Census: Housing Characteristics, Dead and Absentee Population* 2011. Government of Nepal: National Planning Commission Secretariat. [http://cbs.gov.np/wp-content/uploads/2014/03/Household\\_Tables.pdf](http://cbs.gov.np/wp-content/uploads/2014/03/Household_Tables.pdf) [accessed May 1, 2014].

319. Interview with female migrant worker, Kathmandu, August 28, 2012.

320. Interview with migrant worker, Kathmandu, July 8, 2012.

321. A return ticket is included in most employment contracts, whereby the return ticket is purchased after the expiration date of the agreed term of employment. Although this means the worker is not liable to pay the costs of the ticket, it also gives employers a way to threaten workers who protest their working conditions.

322. Interview with male migrant worker, Janakpur, Dhanusha, May 11, 2012.

323. Nepal has 5 regions, 14 administrative zones, and 75 districts, each with its own local administrative structures. The Nepal Police is a national police force headquartered in Kathmandu, but with stations at regional, zone, and district levels. See e.g. Nepal Police. Organization Structure: Nepal Police Personnel. <http://www.nepalpolice.gov.np/organization-structure.html> [accessed May 1, 2014].

324. “Where any person has committed an offense referred to in Section 43 of this act titled “Punishment to Be Imposed in the Event of Carrying on Foreign Employment Business without a License,” the police employee may, if he or she considers that the person could abscond if that person is not arrested immediately, may arrest such person without warrant.” Foreign Employment Act (2064) 2007, Section 62.

325. Interview with Peshal Kumar Poudel, Section Officer, Complaint Section, Janakpur, Dhanusha, May 13, 2014.

326. Complaints reported in this study were primarily made in the Dhanusha district.

327. The police in Nepal often assume the roles and responsibilities of mediating many disputes in the local area. Nepal Police. <http://www.nepalpolice.gov.np/>. See also Gorkhapatra Online. “Most Cases Filed at Women’s Cell Settled through Mediation.” *Gorkhapatra Online*, January 17, 2014. <http://trn.gorkhapatraonline.com/index.php/nation/6917-most-cases-filed-at-women-s-cell-settled>

through-mediation.html [accessed May 1, 2014]. See also Carter Center. “Brief Overview of Political Dispute Resolution at the Local Level in Nepal.” *Carter Center*, December 30, 2010. [http://www.cartercenter.org/resources/pdfs/news/peace\\_publications/election\\_reports/nepal-PoliticalDisputeResOverview-123010\\_en.pdf](http://www.cartercenter.org/resources/pdfs/news/peace_publications/election_reports/nepal-PoliticalDisputeResOverview-123010_en.pdf) [accessed May 6, 2014]; and Dev Raj Dahal and Chandra Dev Bhatta. 2008. *The Relevance of Local Conflict Resolution Mechanisms for Systemic Conflict Transformation in Nepal*. Berghof Foundation for Peace Support. [http://www.nepaldemocracy.org/conflict\\_resolution/Local\\_Conflict\\_Resolution\\_Mechanisms.pdf](http://www.nepaldemocracy.org/conflict_resolution/Local_Conflict_Resolution_Mechanisms.pdf) [accessed May 6, 2014].

328. Interview with male migrant worker, Sinurjoda VDC, Dhanusha, July 4, 2012.

329. Interview male migrant worker, Sinurjoda VDC, Dhanusha, July 7, 2012.

330. Although the *panchayats* have existed for a long time, their role was made official by the Village Panchayat Act of 1949, and then strengthened by the 1962 Constitution of Nepal. See Shrestha, S. B. 1964. *How Nepal is Governed*. Kathmandu: S. N. Shah.

331. The 2011 National Census data revealed that of the total number of migrants, nearly 43 percent came from the Tarai region. Central Bureau of Statistics. *National Population and Housing Census: Housing Characteristics, Dead and Absentee Population 2011*. Government of Nepal: National Planning Commission Secretariat. [http://cbs.gov.np/wp-content/uploads/2014/03/Household\\_Tables.pdf](http://cbs.gov.np/wp-content/uploads/2014/03/Household_Tables.pdf) [accessed May 1, 2014]. We found in our research that of the 54 migrants interviewed, 32 came from the Tarai region and, specifically, the Dhanusha district. This is roughly 60 percent.

332. See Shrestha, S. B. 1964. *How Nepal is Governed*. Kathmandu: S. N. Shah.

333. Daniel Coyle and Sarah Dalrymple. 2011. *Snapshots of Informal Justice Provision in Kaski, Panchthar and Dhanusha Districts, Nepal*. London and Kathmandu: Saferworld. <http://www.saferworld.org.uk/resources/view-resource/555-snapshots-of-informal-justice-provision-in-kaski-panchthar-and-dhanusha-districts-nepal> [accessed May 1, 2014].

334. Interview with migrant worker, Janakpur Municipality, Dhanusha, July 6, 2012; Interview with migrant worker, Sinurjoda VDC, Dhanusha, July 7, 2012; and interview with migrant worker, Sinurjoda VDC, Dhanusha, August 31, 2012.

335. Migrant worker, focus group, Dhanusha, July 2012.

336. Interview with migrant worker, Dhanusha, July 6, 2012.

337. Interview with migrant worker, Sinurjoda VDC, Dhanusha, July 7, 2012.

338. Daniel Coyle and Sarah Dalrymple. 2011. *Snapshots of Informal Justice Provision in Kaski, Panchthar and Dhanusha Districts, Nepal*. London and Kathmandu: Saferworld: p. 47. <http://www.saferworld.org.uk/resources/view-resource/555-snapshots-of-informal-justice-provision-in-kaski-panchthar-and-dhanusha-districts-nepal> [accessed May 1, 2014].

339. Interview with PNCC, Kathmandu, December 25, 2013.

340. Interview with WOREC, Kathmandu, June 12, 2012. WOREC is a nongovernmental organisation working in the field of women’s rights. Among their activities is the program on safe migration for women that includes advocacy related to safe migration, counselling services, migration information booths at strategic locations, and development of educational materials targeted at female migrants.

341. Interview with People Forum, Kathmandu, June 12, 2012.



342. Interview with Pourakhi, Kathmandu, June 8, 2012.
343. Interview with Pourakhi, June 8, 2012, Kathmandu
344. Pro-Public describes itself as a nonprofit, nongovernmental organization “dedicated to the cause of public interest.” See Pro-Public. Welcome to Pro-Public. <http://www.propublic.org/index.php> [accessed May 1, 2014].
345. Interview with Pourakhi, Kathmandu, June 8, 2012; Interview with Pro-Public, Janakpur, May 13, 2012.
346. Interview with GEFONT, Kathmandu, June 5, 2012.
347. Interview with WOREC, Dhanusha, May 13, 2012.
348. Interview with Pourakhi, Kathmandu, June 8, 2012.
349. Local bodies like VDCs and municipalities have been given authority to facilitate and conduct mediation between parties under the Mediation Act of 2011, Sections 6 and 46. Further, the Local Self Governance Act of 1999 has given judicial powers, particularly in relation to arbitration, to VDCs and municipalities (Part 2, Chapter 5). Neither act, however, has explicit provisions relating to foreign employment.
350. Interview with male migrant worker, Tanahun, May 8, 2012.
351. Chandra Bhadra. 2013. *The Impact of Foreign Labour Migration to Enhance Economic Security and Address VAW among Nepali Women Migrant Workers and Responsiveness of Local Governance to Ensure Safe Migration*. Kathmandu: Ministry of Women, Children and Social Welfare, Ministry of Labour and Employment, Ministry of Federal Affairs and Local Development, Government of Nepal: pp. 63–69. <http://fepb.gov.np/newdolrm/uploads/userfiles/files/Final%20Report%20-%20Submitted%20on%2028%20January%202013-1.pdf> [accessed May 1, 2014].
352. HELVETAS Swiss Intercooperation Nepal and the Ministry of Labour and Employment. Safer Migration Project. [http://nepal.helvetas.org/en/our\\_projects/sami.cfm](http://nepal.helvetas.org/en/our_projects/sami.cfm) [accessed May 1, 2014].
353. Under the Foreign Employment Act 2007, Section 29, the FEPB is charged with determining the content of the training, based on the standards set out in the Foreign Employment Rules 2008, Rule 20. The training must include safe preparation for departure; occupational health and safety; national laws regarding foreign employment; geographic, cultural, religious, linguistic, traffic and labor immigration-related information about the destination countries; behaviour, rights and responsibilities of migrant workers; information about safe sex, HIV, and other sexually transmitted diseases; how to remit money and the “purposeful” use of the money. Women are required to receive an additional hour of training related to safety and security, self protection, empowerment, and capacity building.
354. Specifically, the training must: “(i) Make the workers familiar with desirable personality traits that they should instil for a secure and peaceful work experience abroad (such as discipline, loyalty, obedience.); (ii) Familiarize the workers with their rights; and (iii) Make the workers aware of the organizations they ought to contact in case of any mishaps.” Ministry of Labor and Transport, Department of Foreign Employment, Foreign Employment Promotion Board and ILO. 2012. *Pre-Departure Orientation Training Manual*. Kathmandu: Ministry of Labor and Transport, Department of Foreign Employment, Foreign Employment Promotion Board and International Labor Organization: p. 122.

355. Foreign Employment Promotion Board. 2013. Domestic Worker Curriculum. <http://fepb.gov.np/newsdetail.php?id=23> [accessed May 1, 2014].
356. Ibid.
357. Low attendance at orientations is confirmed in other studies. For example, the Asia Foundation found that none of the 51 returned migrant workers it interviewed in Nepal had attended a pre-departure orientation. And although many thought it important to know about the destination country before departure, none had made any effort to obtain this information. The Asia Foundation. 2014. *Labor Migration Trends and Patterns: Bangladesh, India and Nepal 2013*. Kathmandu: The Asia Foundation: p. 16. <http://asiafoundation.org/resources/pdfs/LabourMigrationTrendsandPatternsBangladeshIndiaandNepal2013.pdf> [accessed May 1, 2014].
358. Interview with male migrant worker, Kathmandu, July 5, 2012.
359. Interviews with migrant returnees. See also Maruja M.B. Asis and Dovelyn Rannveig Agunis. 2012. *Strengthening Pre-Departure Orientation Programmes in Indonesia, Nepal and the Philippines*. Bangkok: International Organization for Migration. [http://publications.iom.int/bookstore/free/MPI\\_Issue5\\_28Sept2012\\_web.pdf](http://publications.iom.int/bookstore/free/MPI_Issue5_28Sept2012_web.pdf) [accessed May 1, 2014].
360. See also Maruja M.B. Asis and Dovelyn Rannveig Agunis. 2012. *Strengthening Pre-Departure Orientation Programmes in Indonesia, Nepal and the Philippines*. Bangkok: International Organization for Migration: p. 6. [http://publications.iom.int/bookstore/free/MPI\\_Issue5\\_28Sept2012\\_web.pdf](http://publications.iom.int/bookstore/free/MPI_Issue5_28Sept2012_web.pdf) [accessed May 1, 2014].
361. Interview with a counselor at the Migrant Resource Centre, from the Foreign Employment Promotion Board, February 23, 2012. The FEPB reported that 654 women did in fact obtain this reimbursement in 2013.
362. The researchers did not conduct an exhaustive study of the numerous pre-departure programs and activities in operation, but heard of projects supported by IOM, OSF, Helvetas Swiss Intercooperation, the European Union, Amnesty International, and others. PNCC was a project partner in several projects, and WOREC has also reportedly partnered with local government. See also: HELVETAS Swiss Intercooperation Nepal and the Ministry of Labor and Employment. Safer Migration Project. [http://nepal.helvetas.org/en/our\\_projects/sami.cfm](http://nepal.helvetas.org/en/our_projects/sami.cfm) [accessed May 1, 2014]; Republica. 2013. "Government Provides Foreign Job Information in Villages." *Republica*, April 11, 2013; The Himalayan Times. 2013. "Foreign Employment Information Centre Set Up." *The Himalayan Times*, December 14, 2013. <http://thehimalayantimes.com/rssReference.php?headline=Foreign+employment+information+centre+set+up&NewsID=399491> [accessed May 1, 2014]; and The New Paper. 2012. "MoLTM, PAF Sign Deal." *The New Paper*, April 30, 2012. [http://www.pafnepal.org.np/uploads/news/file/paf-news\\_mou\\_moltm\\_newpaper\\_30april2012\\_20120430063732.pdf](http://www.pafnepal.org.np/uploads/news/file/paf-news_mou_moltm_newpaper_30april2012_20120430063732.pdf) [accessed May 1, 2014].
363. Ujyaalo Online. Desh Pardesh Radio Karyakram. <http://ujyaaloonline.com/desh-paradesh/radio-program/>. [accessed May 1, 2014].
364. Foreign Employment Tribunal Rules 2012, Rule 4(2).
365. Interview with Asian Human Rights and Culture Development Forum, Kathmandu, June 7, 2012.
366. Interview with Saviour Law Associates Pvt. Ltd., Dillibazar, Kathmandu, December 18, 2013.
367. Interview with an official at DoFE, March 11, 2014.

368. Interview with Saviour Law Associates Pvt. Ltd., Dillibazar, Kathmandu, December 18, 2013.
369. Interview with male migrant worker, Kathmandu, June 12, 2012.
370. Interview with Dr. Shree Tek Bahadur Ghimire, Deputy Attorney General, Special Government Attorney Office, Kathmandu, January 21, 2014.
371. Interview with Narayan Rimal, Director, Complaints Registration and Investigation Section, Department of Foreign Employment, Kathmandu, March 11, 2014.
372. Government of Nepal Ministry of Finance. 2009. *Line Item Estimates of Expenditure for Fiscal Year 2009/2010*. [http://www.mof.gov.np/uploads/document/file/Line%20Item%20Details%202009%20-%202010\\_20130722020710.pdf](http://www.mof.gov.np/uploads/document/file/Line%20Item%20Details%202009%20-%202010_20130722020710.pdf) [accessed May 1, 2014]; and Government of Nepal Ministry of Finance. *Documents—Budget Details: Red Book*. <http://www.mof.gov.np/en/archive-documents/budget-details--red-book-28.html> [accessed May 1, 2014].
373. Department of Foreign Employment, *Monthly Progress Report, July/August 2013*. [http://dofe.gov.np/uploads/document/final%20report%20of%20Shrawan\\_20130826121650.pdf](http://dofe.gov.np/uploads/document/final%20report%20of%20Shrawan_20130826121650.pdf) [accessed May 1, 2014].
374. Interview with Section Officer, Ministry of Foreign Affairs on 7 June 2012, Kathmandu
375. Roshan Sedhai. 2014. "Lack of Human Resources: Migrants in Lurch as Embassy Staff Overworked." *The Kathmandu Post*, February 24, 2014. [http://www.ekantipur.com/the-kathmandu-post/2014/01/29/related\\_articles/lack-of-human-resources/258667.html](http://www.ekantipur.com/the-kathmandu-post/2014/01/29/related_articles/lack-of-human-resources/258667.html) [accessed May 1, 2014].
376. Interview with former ambassador to Qatar 2012-2013, February 11, 2014, Kathmandu
377. In 2013, Nepal was ranked 116 out of 177 countries by Transparency International, although this is a significant improvement on 2012 when it ranked 139. Political parties were perceived as the most corrupt actors, followed closely by the civil service. See Transparency International, *Corruption by Country—Nepal*, 2013. <http://www.transparency.org/country#NPL> [accessed May 1, 2014].
378. Verité. 2013. *Labor Brokerage and Trafficking of Nepali Migrant Workers*. Amherst, MA: Verité: p. 26. Research for Verité report was conducted in Guatemala, India, Malaysia, Mexico, Nepal, the United Arab Emirates, and the United States.
379. Narayan Manandha and Jagnath Adhikari. 2010. *Study of Issues on the Recruitment of Migrant Labour in Nepal*. Submitted to the World Bank Country Office, Nepal.
380. Ibid.
381. The Himalayan Times. 2013. "Foreign Employment Information Centre Set Up." *The Himalayan Times*, December 14, 2013; and Ekantipur.com. 2014. "DoFE Staff Accused of Issuing Permits Illegally." *Ekantipur.com*, January 30, 2014. <http://www.ekantipur.com/2014/01/30/top-story/dofe-staff-accused-of-issuing-permits-illegally/384665.html> [accessed May 1, 2014].
382. Amnesty International. 2011. *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*. London: Amnesty International: p. 100.
383. Foreign Employment Act 2064 (2007), Section 73 created the labor desk. See also Samriddhi. 2011. *Foreign Employment for Economic Growth*. Kathmandu: Samriddhi, the Prosperity Foundation: pp. 11 and 21. [http://samriddhi.org/userfiles/research%20and%20publication/discussion%20paper/foreign%20employment\\_web.pdf](http://samriddhi.org/userfiles/research%20and%20publication/discussion%20paper/foreign%20employment_web.pdf) [accessed May 1, 2014].

384. Roshan Sedhai. 2014. "TIA Immigration Remains Pain for Migrant Workers." *The Kathmandu Post*, February 8, 2014. <http://www.ekantipur.com/the-kathmandu-post/2014/02/08/top-story/tia-immigration-remains-pain-for-migrant-workers/259055.html> [accessed May 1, 2014].
385. Female migrant worker, focus group, Kathmandu, August 28, 2012.
386. Interview with Shiddhi Chandra Baral, Chairperson, Asian Human Rights and Culture Development Forum/Migrants' Centre Samakhushi, Kathmandu, December 27, 2013.
387. According to the caste system, the Brahmin priests were at the top of the ritual order. The Kshatriya, or the kings and warriors, came next, followed by the Vaisya, or merchants, who in turn were followed by the Sudra, or the peasants and laborers. The occupational caste was considered "impure" and beneath everyone. In Nepal, the Hindus of Caucasoid stock made up the top two and the lowest "untouchable" groups while the indigenous groups or the Janajatis were accorded the middle ranks.
388. For example, over half of all Dalits live under the poverty line, and 32 of the 59 groups of Janajatis are classified as being marginalized to varying degrees, while only 2 groups are classified as "advanced." The World Bank and Department for International Development, U.K. 2006. *Unequal Citizens: Gender, Caste and Ethnic Exclusion in Nepal*. Kathmandu: The World Bank and Department for International Development, U.K.: p. xxii. <http://siteresources.worldbank.org/EXTSOCIALDEV/Resources/3177394-1168615404141/NepalGSEASummaryReport-part1.pdf> [accessed May 1, 2014].
389. Paul Donnelly et al. 2011. *Access to Security, Justice & Rule of Law in Nepal: An Assessment Report*. Nepal: DFID, Danida HUGOU, UN Resident and Humanitarian Coordination Office: p. 66. [http://www.un.org.np/sites/default/files/2012-10-5-Access%20to%20Security\\_Justice\\_RoL\\_Nepal.pdf](http://www.un.org.np/sites/default/files/2012-10-5-Access%20to%20Security_Justice_RoL_Nepal.pdf) [accessed May 1, 2014].
390. Dankner, Margot, Teresa Taylor, and Monica Youssef. 2011. *Confidentiality and the Legal Process: Leveraging Legislation and Policy to Protect Nepal's Most Vulnerable Victims*. Washington, D.C.: The Community Justice Project at the Georgetown University Law Center: p. 3. <https://www.law.georgetown.edu/academics/academic-programs/clinical-programs/our-clinics/Community-Justice/upload/ConfidentialityandtheLegalProcess-FinalReport-1.pdf> [accessed May 1, 2014].
391. Pranab Kharel, "Women's Presence in Judiciary Still Dismal." *The Kathmandu Post*, September 18, 2012. <http://www.ekantipur.com/the-kathmandu-post/2012/09/17/development/womens-presence-in-judiciary-still-dismal/239751.html> [accessed May 1, 2014].
392. Amnesty International. 2011. *False Promises: Exploitation and Forced Labour of Nepalese Migrant Workers*. London: Amnesty International: pp. 46–51.
393. Adhikari, Jagannath and Ganesh Gurung. 2011. *Foreign Employment, Remittance and Its Contribution to Economy of Nepal*. Kathmandu: Ministry of Labour and Transport Management and International Organisation for Migration.
394. Foreign Employment Tribunal Rules 2068 (2012), Section 4(2).
395. Department of Foreign Employment. "Internal Operational Directives of the Department of Foreign Employment, 2009." <http://dofe.gov.np/uploads/pdf/43Nirdesika%20Final%202066-05-30.pdf> [accessed on 10 May 2014].
396. These include ICESCR, ICCPR, CEDAW, CRC, and CERD, and the core ILO Conventions.

# Open Society Foundations

The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable to their citizens. Working with local communities in more than 100 countries, the Open Society Foundations support justice and human rights, freedom of expression, and access to public health and education.

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## Migrant Worker Access to Justice Project

This report was produced by the Migrant Worker Access to Justice Project. The Project examines and seeks to strengthen the legal frameworks that underpin low-wage labor migration, so as to better protect the rights of migrant workers and ensure redress for workers whose rights are violated. It is currently focused on the under-examined role of countries of origin in ensuring justice for labor migrants and private sector accountability, with a focus on the Asia-Middle East corridor.

The Migrant Worker Access to Justice Project is an applied research collaboration between law professors at the University of New South Wales Law School and the University of Pennsylvania Law School, who work closely with local partners in South and South East Asia. It is led by Bassina Farbenblum (Director of the Australian Human Rights Centre's Migrant and Refugee Rights Project, and the Human Rights Clinic at UNSW Law), Eleanor Taylor-Nicholson (Fellow of the Australian Human Rights Centre at UNSW), and Sarah Paoletti (Director of the Transnational Legal Clinic, Penn Law School).

[www.migrantworkerjustice.org](http://www.migrantworkerjustice.org)

## International Migration Initiative

The International Migration Initiative (IMI) designs and supports initiatives to reform the most abusive aspects of the migration process. The program organizes its work around migration corridors, pursuing coordinated action in countries of origin, transit, and destination. IMI seeks to achieve two specific goals: (1) that labor migration is a safe, just, and non-exploitative process, and (2) that laws, policies, and practices do not discriminate against migrants or violate their rights. To achieve these, IMI targets employment practices and recruitment systems to improve labor protections, migration enforcement policies to reduce rights violations by ensuring that immigration and border controls comply with human rights norms, and governance structures to establish systems that more effectively protect the rights of migrants. IMI draws on the experience and activism of grassroots organizations while simultaneously and vigorously engaging with policymakers and political leaders.

[www.opensocietyfoundations.org/about/programs/international-migration-initiative](http://www.opensocietyfoundations.org/about/programs/international-migration-initiative)

## Centre for the Study of Labour and Mobility (CESLAM)

The Centre for the Study of Labour and Mobility (CESLAM) is a research centre under the aegis of Social Science Baha, Kathmandu, which has the primary objective of contributing to broader theories and understandings on labour and mobility. It conducts interdisciplinary, policy-relevant research on critical issues affecting working people; serves as a forum to foster academic, policy and public debates; and provides new insights on the impact of labour and migration.

[www.ceslam.org](http://www.ceslam.org)







Much attention has been directed to the exploitation of low-wage migrant workers in the Middle East, where harms are commonplace and severe, and access to justice is limited. But the story of labor migration begins and ends at home. The vulnerability of Nepali migrant workers to exploitation abroad is heightened by routine misconduct committed in Nepal during the pre-departure phase by individual agents, recruitment agencies, and other private actors.

*Migrant Workers' Access to Justice at Home: Nepal* is the first comprehensive analysis of the Nepali mechanisms through which migrant workers may seek remedies for harms suffered during recruitment or while working in the Middle East. The study finds that despite Nepal's efforts to protect migrant workers, it is generally failing to hold private recruitment companies and individual agents accountable, and the vast majority of workers remain unable to access compensation or other forms of justice in Nepal or abroad. The study reveals that the laws that govern recruitment and placement of Nepali migrant workers are relatively robust, but their implementation and enforcement are weak.

*Migrant Workers' Access to Justice at Home: Nepal* aims to improve this situation by identifying clear pathways to improving the governance, operation, access and effectiveness of each of Nepal's redress mechanisms, and to more effective regulation of migrant worker recruitment. The report presents detailed and empirically based recommendations for government and other stakeholders that can be implemented in the short- and medium-term, emphasizing the need for a rights-based approach that treats workers as holders of defined, enforceable rights.

*Migrant Workers' Access to Justice at Home: Nepal* will be relevant for other countries of origin in Asia and globally who have much to learn from each other's efforts to address these common challenges. It also provides much-needed guidance for Nepali civil society to better understand, use, and test migrant worker justice mechanisms at home.



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